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ABSTRACT

This guide contains practical, field-tested advice concerning the development of a suitable negotiating strategy for management's use in public sector collective bargaining. The author stresses that strategies are long-term plans of action and that this book does not consider bargaining tactics--the individual methods used to achieve the strategic objectives. The book consists of 20 "how to" sections covering the following topics: detecting and using trends in labor relations; developing a master strategy plan; dealing with different bargaining styles; managing human relations; overcoming major obstacles; avoiding common serious errors; managing the scope of negotiations; retaining management rights; evaluating demands; beginning the flow of agreements; compromising; making bargaining work; making benefits work for the employer; breaking temporary deadlocks; countering union tactics; dealing with charges of unfair labor practices; closing negotiations; using power; handling public involvement; and coping with strikes and strike threats. A final section discusses 14 predictions regarding the future of public sector labor relations. (PGD)

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NEGOTIATIONS STRATEGIES

A REFERENCE MANUAL FOR PUBLIC SECTOR LABOR NEGOTIATIONS

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BY

RICHARD G. NEAL

This book is dedicated to Frances Irene Neal, who held a family together while her husband was absent learning the techniques related in this book.

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ABOUT THE AUTHOR

Richard G. Neal is a specialist in government personnel administration and public sector labor relations. During the past fifteen years, Mr. Neal has lectured to thousands of management personnel throughout the United States and Canada. He is the author of several books on various aspects of collective bargaining in the public sector, as well as author of numerous articles in professional journals. He has represented both management and labor, which has given him unusual insight into labor relations. Mr. Neal is also editor of a number of journals in the area of public sector labor relations.

COMMENTARY

Richard G. Neal is one of the most experienced negotiators in the public sector. I have had the pleasure and privilege of working with him over the past 16 years. During that time, not only has he negotiated very successfully in a variety of settings in several states, but he has served as editor of distinguished periodicals in the field of negotiations, has written or been the co-author of a number of books in the field, has been a featured lecturer in more than 100 seminars, and is the star performer in two widely used films, Dynamics of Negotiations and Solving Impasses.

The negotiations strategies set forth in this book are a distillation of the personal experiences and successes Mr. Neal has enjoyed. I commend them to you as pearls beyond price. Treasure them and use them well.

Eric Rhodes, Ed.D.
National Labor Relations Consultant

OTHER PUBLICATIONS BY THE AUTHOR

1968: The Control of Teacher Militancy

1969: Resolving Negotiations Impasses

1970: Laws Affecting Public School Negotiations

1971: Grievance Procedures and Grievance Arbitration

1971: Readings in Public School Collective Bargaining (Editor)

1972: Avoiding and Controlling Teacher Strikes

1973: Municipal Progress (Editor and Contributor)

1974: Collective Bargaining in Virginia's Public Schools

1976: Negotiations in the Mid-Seventies (Editor and Contributor)

1977: Negotiations Games People Play (Editor and Contributor)

1969-1978: Educators Negotiating Service, 10 Vols. (Editor)

1968-1978: Negotiations Management, 11 Vols. (Editor)

1980: Bargaining Tactics: A Reference Manual for Public Sector Labor Relations

1981: Retrieval Bargaining

This book is not intended to provide legal advice on any matter contained herein and should not be used for such a purpose. Where legal advice is needed on any matter contained in this book, proper legal advice should be sought.

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INTRODUCTION

The title of this book is Negotiations Strategies, while the title of another book by the author is Bargaining Tactics. If judged by their titles alone, the two books would appear to be repetitive; however, in reality, the two books are substantially different. Whereas the terms "negotiations" and "bargaining," as used in the titles of the respective books, are basically the same, the terms "tactics" and "strategies" are significantly different. A strategy is a total plan of action to achieve an objective, while tactics are the individual methods and techniques employed to fulfill that overall plan, i.e., the strategem. Therefore, this book, Negotiations Strategies, describes in detail how to develop your overall plan to carry out negotiations with the union; while Bargaining Tactics describes in detail over 300 skillful methods which may be used to assist in carrying out the master negotiations plan. The two books have been prepared carefully to complement each other. Where possible, Negotiations Strategies should be read first, followed by a reading of Bargaining Tactics. In this way, the reader learns first how to develop the complete general negotiations plan. Then, by reading Bargaining Tactics, the reader can fit the tactics into the negotiations process where and when appropriate. The two books together comprise the most complete compendium of negotiations strategies and tactics available anywhere. Those who can master the skills described in both books have taken an important step toward becoming an expert labor negotiator.

Differences Among Employees Must be Considered

This book contains practical advice which has been field-tested by the author in a variety of public employment situations. The strategies described are generally useful in all public sector bargaining; but the negotiator must use common sense in applying these strategies to each individual situation. For example, firefighters are often assigned 24-hour shifts. Law enforcement personnel regularly work weekends. Nurses must work irregular shifts. Social workers have personal client interests. In many large city sanitation departments a majority of the employees are black. Most elementary school teachers are female. In other words, every bargaining unit has its unique characteristics, and these unique characteristics must be taken into account at the bargaining table. Therefore, although the suggestions offered in this book are generally applicable to all public employees, the practitioner must consider carefully the important differences peculiar to each group of employees.

A Positive Total Employee Relations Program Needed

This book is a complete guide to developing negotiations strategies. Important as such strategies are, however, they are only a part of a total employee relations program. No government agency can base its employee relations exclusively on collective bargaining relationships and expect to manage its personnel productively. The author has served in numerous administrative positions and has learned through long experience that success in bargaining can be enhanced by an enlightened employee relations program. The reverse is also true, in that successful negotiations (a sound labor contract) can provide the framework for productive employee relations. Employee relations and negotiations go hand-in-hand and those government agencies which fail to recognize this relationship will not achieve the full productive potential of the agency.

Book Overview

Many years of labor negotiations with many different groups of public employees in many states and under many varying conditions has led me to conclude that all labor negotiations should be conducted under a carefully prepared strategy plan. True, some inexperienced negotiators do enter into negotiations with no such plan and do, in a fashion, muddle through the negotiations process. While these inexperienced negotiators never seem to learn there is a better way to conduct negotiations, a well-planned, effective strategy is essential for consistent success. This book describes how to prepare just such an effective negotiations strategy.

The book is divided into a number of sections, each section dealing in practical detail with the major challenges inherent in all labor negotiations. By learning how to cope with these inevitable challenges, the negotiator will take a giant step toward becoming a master negotiator. The major challenges contained in all labor negotiations are:

1. How to detect and use trends in labor relations

Each time that a labor contract is negotiated the circumstances are different. Circumstances change at all levels of government employment, whether it is local, state, or national. Negotiations always take place in the midst of various, different trends. For example, the past decade has seen a fluctuating Consumer Price Index. Such fluctuations (or trends) invariably affect the nature of negotiation. A change in the national presidency and make-up of Congress can influence labor relations, just as changes in the attitudes of taxpayers can greatly color collective bargaining on all levels of government. The wise negotiator detects these trends and uses them in planning the master strategy for negotiations. In this opening section the author identifies the important trends in public sector labor relations and reveals how these trends impact on the collective bargaining process.

2. How to develop a master strategy plan

All negotiations should be executed under the guidance of a carefully developed strategy plan. Failure to have such a plan, and to follow that plan, leaves the negotiator vulnerable to the superior tactics of the opponent. Such a plan of strategy has numerous advantages which are discussed in detail in this book. How to develop such a plan, and what the contents of the plan should be, are also discussed in detail.

3. What bargaining style will be faced?

All labor negotiations can be categorized according to a defined pattern. each pattern requires a different response. If the opponent uses a Boulware approach, there is an appropriate counter response. If the opponent uses "concept" bargaining, there is a different appropriate response to that method. This book describes in detail the various patterns of bargaining and how to deal with them.

4. How to manage human relations

Many negotiations go sour, resulting in unnecessary acrimony between the parties, because the improper emotional tone was set. Negotiations are difficult enough without being complicated by hostilities between the parties. Hostile acts on the part of the union simply harden management resistance to improvements in benefits and working conditions. And hostile acts on the part of management simply unite the union membership into tougher demands. Hostility serves no purpose in a negotiations situation and should therefore be avoided. The appropriate chapter in this book addresses this concept and offers some specific techniques for controlling the emotional tone for negotiations.

5. How to overcome the major obstacles of bargaining

Regardless of what labor negotiations are involved, there is always a common set of obstacles which must be dealt with. Whether the negotiations deal with nurses or truck drivers, teachers or custodians, the same obstacles will reappear. By accepting the fact that these obstacles do exist the negotiator is in a much better position to surmount them. Negotiations Strategies not only identifies the major obstacles in bargaining, but offers workable suggestions for overcoming these obstacles.

6. How to avoid the common but serious errors in negotiations

The author has been involved in employee relations for twenty-five years, fifteen of which have dealt directly with labor relations. During that period of time he has made numerous mistakes primarily because in the early years of public sector negotiations there were few experts available to provide guidance. Hopefully, this book will help others to avoid making the errors that pioneer negotiators made. Frankly, when the reader has completed the appropriate chapter which discusses the most common errors in negotiations, there should be little excuse for making any of the errors described.

7. How to manage the scope of negotiations

All labor negotiations involve varying degrees of serious discussion over what topics are negotiable. Such discussions are inevitable and must be prepared for. Mistakes concerning the scope of negotiations can lead to some serious labor relations problems. The section in this book on the scope of negotiations offers some very practical techniques for assuring that negotiations are limited to wages, hours, and working conditions.

8. How to retain the right to manage

Closely related to the issue of negotiability is the issue of management rights. Let's face it, no public agency can long succeed unless somebody runs the shop. The ultimate right to manage in the public sector is the ultimate obligation to manage. If the negotiator fails to protect management's right to manage, then that negotiator has experienced the ultimate failure. How to retain the right to manage is a subject of serious discussion in the section of the same title.

9. How to evaluate demands

Successful negotiations require that the negotiator know how to evaluate the proposals of the opposing party. The evaluation of negotiations proposals involves the routine consideration of a number of relevant factors. These factors are discussed in detail in section IX.

10. How to begin the flow of agreements

One of the initial problems that the negotiator faces is how to take the first step in beginning the flow of agreements. If either party is inexperienced, this period of negotiations can be awkward. There can be nervousness, fear, and suspicion; all of which prevent unencumbered attempts to resolve problems. There are numerous techniques which the author has learned over the years to successfully ease the early stages of entering into agreements. These techniques are described in detail in the appropriate chapter.

11. How to (and when to) compromise

No successful negotiations can take place without some form of compromise on the part of both parties. The very essence of negotiations is the process of compromise. If either party has taken a rigid and final position on a point, then further negotiation is hopeless. To the extent possible, neither party should allow itself to be placed in a position where no fruitful discussion is worthwhile. Human civilization tends toward order, rather than disorder--since order is more acceptable. Therefore, there is usually an orderly answer to any negotiations dispute, the only issue is if the parties have the skill to find the solutions. In the section on compromises, the author discusses some twenty-five points to consider in making negotiations compromises.

12. How to make bargaining work

Although this book is designed primarily to help the negotiator develop a master strategy for negotiations, some attention should be given to specific bargaining tactics. Those who wish more of such specifics should read Bargaining Tactics.[1] That book contains over 300 tactics which have been successful at the bargaining table. In this book, Negotiations Strategies, the author has selected a number of tactics not covered in Bargaining Tactics for special consideration.

13. How to make benefits work for you

Employees give their time, effort, and skills to an employer in return for wages and benefits. One of the purposes of collective bargaining is to provide a system for determining mutually agreeable wages and benefits. This chapter describes how you can use the negotiations of benefits to your advantage.

14. How to break temporary deadlocks

Every experienced negotiator has faced a temporary breakdown in negotiations. These temporary deadlocks can be caused by a variety of situations, such as emotional conflicts, fatigue, and misunderstandings. When faced with a temporary deadlock, there are a number of standard techniques which can be called upon. These standard techniques have been developed by the author in his many hours at the bargaining table, and in the hands of a competent negotiator these temporary stalemates should not escalate into a full-blown negotiations impasse.

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[1] Richard G. Neal, Bargaining Tactics, a Reference Manual for Public Sector Labor Negotiations (Manassas, Va.: Richard Neal Associates, 1980).

15. How to counter union tactics

A union is a political organization with a membership it must satisfy. In order to satisfy the expectations and demands of that membership a great deal of pressure is often put on the union negotiator to deliver better wages and benefits. As a result, the union negotiator may feel compelled to employ tactics which can be quite intimidating. The section on union tactics identifies these tactics and discusses how to counter them.

16. How to deal with charges of unfair labor practices

Most public sector bargaining laws provide a framework for labor relations which is more beneficial to employees than to employers. Under collective bargaining, too frequently the employer bargains while the employees collect. With such an arrangement, whenever the employer will not agree to a union demand and negotiations stall, there is likely to be an unfair labor practice charge lodged against the employer. After all, the union suffers nothing by making such charges and the worst that can happen is that the union loses its case. Losing the case, however, represents no real loss to the union, since it only fails to obtain that which it never had. If the union wins with the unfair practice allegations, it gains something that it never had before. Such charges are often merely negotiations tactics designed to intimidate the employer into making a concession which it otherwise would not make. The relevant section exposes the true nature of unfair practices and how to avoid and/or defeat such charges.

17. How to close

Closure is the most difficult and dangerous point in negotiations. It is usually that point in time when the most important issues are on the table, and time is running out. As time runs out, pressure mounts; as pressure mounts, the parties think less clearly; and hence the likelihood of mistakes increases. At this point of closure the novice often makes the most serious mistakes. However, these mistakes can be avoided by following the several practical rules learned by the author through many trials and many errors. The section on closure identifies these rules and describes how to apply them.

18. How to use power

Labor negotiations is an adversary process, and, as such, both the overt and the subtle use of power, as well as the threat of power, is an omnipresent force at the bargaining table. However, how this power is actually used is a critical issue. The failure to use power at the proper moment, or the use of power at the wrong time, can result in a serious breakdown in the negotiations process; a situation to be avoided. There are many dimensions of power and there are many ways to use power in the bargaining process, all of which are discussed in the appropriate section.

19. How to handle "fishbowl" bargaining

A number of states now require that bargaining take place, to some degree, in public. Even in states where "fishbowl" bargaining is not required, the "sunshine law" movement has generated considerable pressure to force bargaining out into the public arena. Regardless of the state's bargaining law concerning the public's "right-to-know," many experienced negotiators have had the experience of seeing negotiations overflow into the community. Such community involvement is often a manifestation of the underlying struggle in public sector labor relations. It is a struggle over who shall control the public--the elected officials or the employees of the elected officials. The proper section explores the many complex ramifications of sunshine bargaining, and how to make the best of it.

20. How to cope with strikes (and the fear of)

During the past several years there have been several hundred public employee strikes, most of which were illegal. Unfortunately, the final settlement of these illegal strikes all too often produced employee benefits which would not have otherwise been granted by the employer. In such cases, the employees were essentially rewarded for breaking the law. Of equal concern, however, is the fact that for every actual illegal strike there were at least ten threatened strikes. In too many of these situations the employer again made concessions which otherwise would not have been made. To avoid the granting of unjustified concessions under a strike or a threatened strike, no public employer should enter into collective bargaining without a thorough strike plan. Why such a plan is important and how to prepare such a plan is outlined in an important section.

I. TRENDS IN PUBLIC SECTOR LABOR RELATIONS

When the author first entered the field of public sector employee relations, he represented an employee association of 1,300 employees. At that time (the mid-1950s) there was not a single federal or state law concerning collective bargaining at the local, state, or federal level. Strikes by public employees were unheard of. Even "unions" were few. Arbitration of grievances was an unfamiliar process, and binding labor contracts did not exist.

Today, however, most federal workers are governed by a collective bargaining law. Almost all states have laws governing collective bargaining. Strikes occur in great numbers each year. There are several thousand labor contracts in force, and disputes arising from those contracts are usually resolved by some form of grievance arbitration.

A. Trends Need to be Watched

At any given point in time, a number of trends can be observed in the development of collective bargaining in the public sector. When viewed from a distance, all of these trends can be subsumed under one overriding trend. That one major trend has been the shift in the historic political power balance between public employees and the public. In other words, collective bargaining in the public sector has increased the power of public employees. This, in turn, has resulted in a less responsive government at ever-increasing costs. In the author's view, this overall trend is one of the chief causes of the "conservative" lean in politics.

Among the trends currently in progress in public sector labor relations are:

1. Stabilization in bargaining laws

During a ten-year period from 1965 to 1975, over half of the states approved collective bargaining laws for public employees. By the end of the 1970s, it appeared that this trend had slowed considerably. Also during that period of time the approach to collective bargaining in the various states was undergoing a widespread experimentation. The nature of state labor laws varied from the comprehensive and sophisticated to the narrow and amateurish.

By the end of the 1970s, this trend had slowed considerably, however, and the 1980s now give a different picture. Few states will be added to the list of those with bargaining laws; and those states with bargaining laws will make few substantive changes in existing laws. In summary, the nature of collective bargaining in the public sector has reached a period of stabilization. The growth and exuberance of the 1960s and 1970s is over and the movement has achieved most of its major goals.

2. Employee associations finally identified

Prior to the mid-1960s, most public employees did not belong to an employee organization and many of those who did belong did not view their employee association as a union. However, beginning in the mid-1960s, with the advent of collective bargaining for public employees under law, employees became more openly accepting of the union movement. If there is any doubt about this statement, one needs only to be reminded that from the mid-1960s until the opening of the 1980s, the American Federation of State, County and Municipal Employees was the fastest growing labor union in the nation. The transition from employee association to labor union was particularly hard to accept by many rank and file "professional" workers like teachers, nurses, and social workers. Many employees in these categories today still do not view their employee association as a bona fide labor union. The fact is, however, that labor unionization is now firmly entrenched in the public sector. Gone for the most part are the old "professional associations" that were more interested in improving public service than in improving the welfare of the public servants.

3. Strikes continue

In the early 1960s, strikes by public employees were fairly infrequent and in all cases viewed as a real threat to the stability of government service. Beginning around 1965, the number of strikes by public employees increased for a period of at least a decade. Practically every category of public employee--prison guards, policemen, teachers, nurses, mass transit workers, firemen, and trash collectors--all had been on strike at some time. Most of these strikes have been illegal and, while the public on the one hand seems to have grown to accept such happenings as somewhat normal, it now seems to be showing its exasperation with such activities by moving politically to the right. Certainly, the national election of 1980 indicated a desire on the part of the public to roll back government and to trim the fat.

4. Politicization of public unions

Prior to 1965, politicians generally viewed public school teachers as too insignificant for political consideration. However, in 1976, President Carter publicly stated that public school teachers were a determining factor in his election and promptly gave them the U.S. Department of Education as payment for their efforts. All public employees have gone through the same transition to some extent. By the beginning of the 1970s, politicians were openly seeking the votes of public employees by making all sorts of promises to improve their welfare. Although the national election of 1980 seemed to indicate that the love affair between politicians and unions was fading, public sector unions continue to be a significant factor in local, state, and national politics.

5. Agency shop still sought

Since union shops and closed shops are illegal in the public sector, the public sector unions devised a new twist--the "agency shop." The agency shop is an arrangement whereby, although the employee is not required to join the union, he must pay a service fee to the union or be fired from employment. This service fee is in lieu of the normal membership dues and is supposed to pay for the various union services rendered under exclusive recognition. However, there is no real competing union to the union in power, and the agency shop continues to be a real plum for unions to obtain for their union contracts, particularly since the agency shop clause guarantees union financial income even though the employees do not join the union.

6. Grievance arbitration

Before the advent of collective bargaining in government service, the procedures for handling employee complaints varied considerably. They ranged from those government agencies which provided no formal procedure for resolving employee complaints to those government agencies which provided a sophisticated procedure of progressive review of complaints ending in a final and binding decision by some form of civil service fact-finding. Whereas, by 1960, in the private sector over 90 percent of all labor contracts contained a provision for binding arbitration of grievances, public sector employees had hardly heard of binding arbitration of grievances. By 1980, that situation had changed drastically. The process that began in the mid-1960s still continued fifteen years later as more and more labor contracts in the public sector contained binding arbitration as the last step to resolving allegations by employees that the labor contract was not being applied properly. Increasingly binding arbitration of grievances is becoming an expected and integral part of labor contracts in the public sector and, as a result, management negotiators find the rejection of such union proposals very difficult to sell to the union.

7. Expansion of the scope of bargaining

Although state bargaining laws generally require that negotiations take place on "salaries, benefits, and working conditions," the actual practice varies among the states and among the governmental jurisdictions within the states. One trend can be identified with certainty, however, and that is the inexorable trend to expand the scope of negotiations. The very nature of collective bargaining, which is essentially one party asking the other for more, makes the expansion of the scope of bargaining inevitable. If the labor contract one year includes duty-free lunch periods, rest periods, wash-up time, and free uniforms--all as proper topics under the heading of "working conditions" --the union is forced the next year to ask for more benefits under the heading of "working conditions," such benefits as access to lounge areas, free parking space, time off for union business, etc. After several years of such negotiations, the typical labor contract contains a broad spectrum of provisions, all under the guise of "working conditions."

To assure that the labor contract does not include topics not intended by the bargaining law, the management negotiator should become very familiar with the legislative background of the state's bargaining law and follow carefully all of the decisions resulting from arguments over the scope of bargaining, i.e., arbitration decisions, state agency decisions, and court decisions. By being well informed, the negotiator is in a better position to reject proposals which are not considered to be "working conditions."

8. Citizen resistance to government

By the late 1970s, government at all levels had reached such size, scope, and expense that its growth had to be resisted. Thus, with the 1980 elections, a majority of the voting citizens made their hostility to government clearly known. By the end of the 1970s, hard-working taxpayers had been subjected to a number of problems, the most serious being:

a. A government-caused inflation which eroded the purchasing power of citizens no matter how hard they worked. Many citizens came to realize that the inflation they were forced to endure was a purposeful act of the government (federal) to raise funds for egalitarian projects for which the government could not, through legal taxation, legitimately obtain funds. Not only were citizens forced to suffer the impact of inflation itself, but they were doubly punished by a progressive income tax law which places taxpayers in higher tax brackets as their salaries are artificially increased by inflation. In their frustration, the taxpayers became hostile to government generally.

b. Hundreds of illegal strikes by public employees. By the opening of the 1980s, American citizens had been subjected to over two thousand strikes by public employees. While enjoying the job security that goes with a monopolistic government job, those public employees also utilized illegal labor strikes as a weapon to exact even more tribute from the taxpayers. Citizens soon learned that a strike by employees in the competitive free marketplace is quite different from a labor strike in a monopolistic government service such as their neighborhood public schools. By the end of the 1970s, any citizen who had read newspapers, or watched television, had seen enough of public employees walking the picket line and making demands for more and more. In a way, the public employee unions got more publicity than they sought, for by 1980, the hostility of the taxpaying public to these militant unions of public employees was being clearly demonstrated in the polling booths around the nation.

c. A general deterioration in government services. Over a protracted period of time many citizens have concluded that there is a reverse correlation between the amount of money spent on government and the quality of that service. While inflation may have increased some 200 percent by the end of the 1970s, the cost of government had increased by over 400 percent, and during that time many citizens became convinced that government services had deteriorated. As the personal financial plight of taxpayers worsened, the government (and its employees) seemed to grow fatter and less responsive to the needs of the people, especially the workers. Under such conditions, is it any wonder that public employee unions have come to be viewed with suspicion?

9. Emergence of the management team

When the author first started in the employee relations field in the 1950s, the line between rank and file employees and supervisors was unclear. This lack of distinction was particularly true in the various professions, such as teaching, social services, and nursing. During the first years of collective bargaining under state law, one of the first issues to arise was the determination of who was a "manager" and who was an "employee." In the early days of public sector bargaining many managers could not seem to understand that collective bargaining was not intended for them, that managers were part of management, and, as such, should sit opposite the employee union at the bargaining table.

Understandably, the unions were able to take advantage of this naivety and during the formative years of collective bargaining the unions were able to obtain many concessions which they otherwise would have been unable to achieve. However, as bargaining matured, both sides began to understand their roles. As a result, there is no doubt that management skills in labor relations have improved more rapidly since the beginning of collective bargaining than have the skills of the unions. Unions now find concession at the bargaining table much harder to achieve than was the case a decade ago.

10. Increase in multi-year contracts

In the early years of collective bargaining in the public sector, unions generally sought one-year contracts. Such short-term contracts gave the unions a more frequent opportunity to negotiate additional benefits than would be the case with a multi-year contract. Although management generally resisted one-year contracts during the formative years of bargaining, too frequently management would agree to a one-year contract. The usual reason given for such concessions was that the union would demand more if management requested a multi-year labor contract. Another reason given by management for acquiescence to the union demand for one-year agreements was that management was fearful of agreements of more than one year because of the fluctuations in the Consumer Price Index. In other words, management rationalized that it might become locked into an agreement that guaranteed a salary increase the second or third year higher than the inflation rate, or higher than management would be able to afford.

Whatever the reason for the plethora of one-year contracts in the early years of bargaining, they provided the opportunity to expand the labor contract annually. With the passage of time, the price, both tangible and intangible, became more than management could tolerate.

As a result, management became more intransigent in its demands for multi-year contracts. Simultaneously, many unions became more agreeable to multi-year agreements since they were beginning to have experiences with management engaging in "take-back" bargaining, a process whereby management negotiates an existing benefit out of the labor contract. As a result, the tendency today toward multi-year agreements is greater than during the early years of job bargaining.

11. Maturation of negotiations

The first ten years or so of bargaining was largely a process of the union asking and management giving. At some point the fallacy of this approach becomes apparent and management must dig in its heels; otherwise, government would price itself out of business. This process can be observed in hundreds of government agencies throughout the nation, where the union was generally successful in gaining progressively better benefits for its members, while management was facing increasing problems in meeting the obligations it had agreed to at the bargaining table. Unions today, therefore, face stiffer resistance across the bargaining table than was the case a decade ago. As a matter of fact, many unions admit privately that they would be satisfied if they could just hold on to the benefits they now have. Because of this shifting power balance, the negotiations process has matured to a somewhat more stable relationship between the parties.

12. Improved job security

Public employees generally (and federal employees and public school teachers specifically) have always been provided better job security than those in the private free-market sector. The imposition of collective bargaining on government operations has increased that job security even more. Job security for union members is one of the highest priorities for unions. This high priority is reflected in the thousands of labor contracts throughout the nation which include some form of job security for employees, and it does not take much in the contract to improve job security for employees. Job protection can be enhanced by a clause which specifies an evaluation procedure. If management fails to follow the procedure exactly, the employee likely cannot be dismissed. A clause obligating management to follow some past practice can similarly interfere with the dismissal of an employee who otherwise should be terminated. In summary, just about any clause which speaks to any process that might be related to the employee's performance can be used to obstruct the dismissal of the employee.

Because of collective bargaining, public employees now have greater job security than would have been the case had there been no collective bargaining. The only possible exception to this conclusion is found in the acceleration of reductions-in-force now taking place in many government agencies. Although many union contracts do contain procedures for reducing the number of employees, there is very little even a union can do when the well runs dry. In such cases, the union is the first to suggest which employees (the less seniored) should be the first to go. The author has experienced a number of situations where the union was willing to lay off part of the workforce in order to obtain a salary increase for those who remained.

13. Experimentations in cost reductions

There's no doubt about it. Government budgets at all levels (except at the federal level, where inflation is an advantage) began to face serious shortages in the mid-1970s. Remember New York City? There was an example of how a government can become totally detached from the economic realities of life. The frightening aspect of the New York City crisis, however, was the fact that the impending dire plight of the city could be covered up from New Yorkers for so long, almost to the point that recovery on its own was impossible.

However, as it turned out, New York City may have been the best possible economic lesson for the nation, because the entire nation deplored the reckless financial manner by which the city fathers governed the city. As a result, several positive developments took place:

a. New York City became a huge laboratory experiment which is gradually proving that a city can prosper without huge government handouts.

b. New York City showed that the people who complain the loudest during budget cutbacks are the employees on the public payroll. But New York City also showed that a city can cut back its public workforce on a large scale and still survive--and maybe even prosper.

c. New York City served as a warning to the entire nation. It became a possible bellwether for the entire nation. It was a better lesson in economics than all of the economics courses offered at Harvard University!

d. Although there were a number of reasons for the economic plight of New York City, the high cost of government was the primary cause, and the primary cause of high government cost was the exorbitant prices required to pay for the hundreds of union contracts for city workers, especially teachers.

Just as New York City learned that there is a point on the economic scale when government becomes the enemy of the people, the entire nation is beginning to learn the same lesson. In 1946, only one out of every twelve employees was a public employee. Today, one out of every five employees is a public employee. Such a striking change without a corresponding increase in productivity is bound to cause serious economic problems. When one adds to this figure the fact that most public employees are now unionized and demand ever-increasing wages and benefits for ever-decreasing services, the current lack of prosperity in the nation can be easily understood.

As a result of the growing austerity of government budgets, public agencies throughout the nation are experimenting with ways of cost-cutting and efficiency improvement. In an expensive roundabout way, then, one could reason that collective bargaining in the public sector has contributed to more efficient government, but that would be a very gratuitous rationalization.

Suffice it to say that the present belt-tightening process in government is going to take place at the bargaining table. In brief, that means that one way or another government agencies are going to find better ways to deliver the services for less unit price. That will inevitably mean a limit on the number of employees, a more reasonable limit on their salaries and benefits, and the use of various technologies to deliver services more efficiently. It will also mean an increase in the contracting out of government services to private enterprise, where services can generally be performed more efficiently. Needless to say, the unions will fight every inch of the way to resist this trend, but there is no way that it can be stopped. Government has grown so pervasive and unresponsive that the nation cannot reasonably continue as it has for the past twenty years.

14. Transfer of employee loyalty

Many years ago I worked with a very experienced labor relations expert. I spent many hours talking with that leader in labor relations, and I remember a comment he made to me, which at the time I did not really appreciate. He said: "You know, the ultimate issue in labor relations is who shall control the loyalty of the workforce, because whoever controls the workforce controls the agency." Many years later and many negotiations later, I now realize more fully what he meant. The advent of collective bargaining to the public sector introduced an adversary process which, although not good for the private sector, is even worse for the public sector. Among the many negative results of collective bargaining in government service is the polarization of employees and employers into two hostile camps. Prior to collective bargaining public employees had a degree of commitment to the public agency which employed them, but, after fifteen years of collective bargaining in government service, public employees today generally view their employers as exploiters and enemies. Naturally, not all employees feel this way, a minority are consistently supportive of their employer. But such support is difficult when one's union is fostering an anti-management attitude and when there s a state law that requires that of the employees, all employees must be represented by a union even if 49 percent of the employees do not want a union to represent them.

As a result of this trend, there has been a significant shift in the loyalty of the employees away from the employer to the employee's union. This transposition is unfortunate in that it deprives the employer of a vital commitment in the employer-employee relationship. The loss of employee loyalty, to whatever degree, is inevitably reflected in the quality of the service performed by the employee.

15. Retrieval bargaining

Collective bargaining in the public sector has its roots in an era of overall economic prosperity. Public employees were generally convinced during that period (the fifteen-year period following World War II) that they were being treated less well than private sector employees, and a few of their leaders set out to correct the alleged disparity. Unfortunately, they chose the labor relations model that was already on its way to destroying American industry as a world leader. They chose collective bargaining under law as the means by which to obtain greater prosperity. Unfortunately, collective bargaining does not produce any useable product. Collective bargaining simply helps decide how the products of society shall be divided. Collective bargaining is based upon the concept that whoever can assemble the most powerful gang can obtain the greatest benefits. This concept may work for awhile, or until most people have joined a gang and only a few are left as the true producers.

In a sense this is what has happened in America during the last quarter of the twentieth century. In many ways, our politics have created a society more interested in consumption than in production.

Therefore, we face a declining standard of living, especially in comparison to other more productive nations. This decline in our nation's productivity is reflected in all aspects of our lives. As the decline relates to collective bargaining, it can be seen in a number of ways:

a. The public-at-large is far less supportive of government employees than it was twenty years ago. Public education presents the best example. In the late 1940s, and throughout the 1950s and into the early 1960s, nothing was too good for public education. Even the teacher's lot improved more rapidly than other public employees. Taxpayers would do almost anything to improve public education in their communities. But today there is widespread hostility to the public schools. Certainly, there are many valid reasons for this development, but the unionization of teachers is one of the major reasons for the erosion of public support for the public schools.

   This erosion of public support for government generally is reflected at the bargaining table. Governing bodies generally are now holding the line when it comes to economic matters and employee working conditions. Gone are the days of more pay for less work.

b. Inflation is just another word for economic decline. It is just another word for a devalued monetary system. Inflation is just another way of describing oppressive government. Inflation at the bargaining table simply means that no matter what salary offer is agreed to, it will not be enough to improve one's standard of living. In a sense, inflation is a payment to all of those unions which have played their part in wounding of our free economic system.

c. Unions must live with reductions in the force of their union members. As our economy weakens, government is less able to afford a bloated workforce. As a result, it becomes necessary to lay employees off. Faced with austerity in government budgets, all the unions can do is participate in the funeral.

d. Employees who remain in the service of government will be expected to work harder in order to maintain government services. Although government services will be cut back some during this period of national economic reevaluation, the public will continue to demand endless services from its various governments.

All of the factors discussed above spell out one trend which can be expected at the bargaining table. That trend is retrieval bargaining. Retrieval bargaining is a process whereby management retrieves through negotiations benefits which employees have heretofore enjoyed. Retrieval bargaining is manifested in salary offers which do not keep pace with inflation. Retrieval bargaining is manifested in the laying off of employees. Retrieval bargaining is manifested at the bargaining table when benefits are removed that were possessed by employees. And, retrieval bargaining is manifested by unilateral and negotiated increase in the amount and quality of work performed by employees who are left on the job. For an expanded discussion of retrieval bargaining, refer to the author's presentation on this topic, How to Negotiate Retrievals.[1]

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[1] Richard G. Neal, How to Negotiate Retrievals (Richard Neal Associates, 1981).

16. College bargaining levels off

Only a small fraction of the nation's 600,000 college teachers are unionized, and the 1980s will see little change in this situation for two basic reasons:

a. The U.S. Supreme Court has ruled that college professors (in private colleges) are not entitled by law to bargaining rights; and

b. Few additional states will provide collective bargaining rights for college teachers in the 1980s.

Whereas the big push to organize college teachers took place in the 1960s, it began to sputter in the 1970s and has leveled off in the 1980s. Not only has the expansion of bargaining leveled off at the higher education level, it is being pushed back among private colleges, due to the Yeshiva decision. Ground is also being lost in the public colleges due to a decline in college enrollments and cutbacks in teaching staffs. For those who are fortunate enough to be retained on college faculties, the economic crunch has made impossible any significant monetary concessions to unions. Consequently, college professors, who may have had some support for unions a decade ago, may not feel the same today.

B. Two Overriding Trends

The author has been involved formally in employee relations and labor relations for twenty-five years. During this period of time he has observed two overriding trends in public sector labor relations, both of which are the direct result of collective bargaining. These two super-trends are the redistribution of political power and a diminution of accountability.

1. Redistribution of political power

In 1946, about one of each twelve employees in America was a public employee, and practically none of those public employees belonged to a union that engaged in collective bargaining. In 1946, the nation was to begin one of the greatest and most rapid rises in human standard of living ever witnessed in the entire history of mankind. A mere twenty-five years later, by the 1970s, one out of every five employees in America was a public employee, and most of them belonged to some type of union and engaged in some form of collective bargaining. One considers the fact that, in addition to the one out of every five employees is on the public payroll, several million more private employees are directly dependent upon government expenditures (in that their employers hold large government contracts), one can easily observe that a very large and hence dangerous proportion of the nation's workforce has a vested interest in the continued expansion of the public sector.

Now that some 20,000,000 workers are on the public payroll, this force has become a significant political factor in local, state, and national politics. Many politicians openly seek the votes of public employees in return for promises of higher salaries and better working conditions. Many a school board member has been elected by the block voting of teachers. Many a local city council member has been voted into office by the block voting of city employees. Many a governor has sought and gained the support of state employees in order to gain office. Even U.S. presidents have been known to solicit the support of public employees; witness President Carter's attempts to influence federal employees and his open admission that public school teachers were a deciding factor in his winning the presidency.

Collective bargaining by public employees has contributed to a harmful unbalancing of the national historic political forces in several ways:

a. Public sector unions have now become significant political forces at all levels of government; whereas, only a mere generation ago public employees were considered nonentities in that they were generally evenly divided along the normal political lines at all levels. No longer is this the case, however. Since public employees and their unions have (only in appearance) more to gain from collectivist politics, than from the politics of individual freedom and free enterprise, public employees now significantly tend to vote for the Democratic party.

But the point being made here is not that public employees tend to be Democrats rather than Republicans; the point is that the large number of public employees now organized into an effective political force has led politicians (whose main purpose in life is to get reelected) to make continued promises to expand the public sector in order to obtain needed votes to stay in office. By promising to take care of public employees, the politician has greater assurance of continued power. Unfortunately, the final outcome of such coalitions between public employees and the public representative is that the legislators and the public employees team up to fleece the private sector taxpayer. Carried to its ultimate the public's servant becomes the public's master.

b. The presence of collectively bargained contracts by public employees has eroded the power of the public to control its government through its elected officials. This has come about because labor contracts are binding on the legislative branch of government, irrespective of changes in those elected to public office. In other words, the labor contract becomes stronger than law or policy, because it cannot be changed until its expiration and then only through the complicated process of negotiations. As a result, organized public employees have more control over the government through unions, than do the people for whom government is designed--the taxpayers.

c. Labor contracts are under the joint control of management and the union, in that if the union objects to the manner in which the contract is being carried out, the union (or the employee) can lodge a grievance. In most instances the last step of the grievance procedure is some form of impartial review or arbitration. In thousands of labor contracts, the final decision on a dispute over the labor contract is not made by the governing body; it is made by a person (an arbitrator) who has no accountability to the people for whom the government agency has been designed to serve. Therefore, through the use of arbitration of contracts disputes government has now lost a degree of the freedom to serve the taxpayers that it had in the recent past.

2. Diminution of accountability

Government, by its very nature, has never been as responsive to the consumers of its services as private enterprise is responsive to its customers. Add to this the fact that government must now cope with the presence of powerful government employee unions and the responsiveness of government is further diminished. Other reasons for this decreasing responsiveness are:

a. Labor contracts have increased the job security of public employees, making more difficult the removal of unsuitable employees. As supervisors find it increasingly difficult to fire incompetent employees, and as employees become increasingly aware that they cannot be fired without considerable "due process," both parties quickly become less concerned with matters of accountability for their work.

b. Although collective bargaining has had a tendency in some instances to clarify just who is on the management team, and thus more clearly fix accountability, there are hundreds of public agencies where persons with managerial responsibilities are unionized and engage in collective bargaining. In such instances, the ability of the governing body to hold anybody accountable for what goes on at the work site becomes more difficult than otherwise would have been the case.

c. Public sector managers have never had the performance accountability which exists in the private sector. Add to this fact the presence of an active labor union among rank and file employees in a government agency, and there follows a "chilling impact" on administrative initiative. This chilling impact is the result of a complex process, including such factors as those that follow:

(1) Some managers are fearful of the union and therefore become less inclined to take any action which may incur the wrath of the union.

(2) Some managers have a divided loyalty between their employer and the employee union, thus hindering their ability to make wise management decisions.

(3) Some managers actually want the union to "win," because as union members get increased pay and better benefits, the welfare of managers automatically improves correspondingly.

d. The negotiations of a labor contract under law provides a convenient excuse for legislators and bureaucrats to escape accountability for bad decisions and inefficient operations. This escape is made possible by blaming the union for certain unacceptable events or by blaming the state's bargaining law for the presence of an improper labor contract provision. In summary, the presence of the labor contract places one more powerful constraint on all government agencies devoting themselves exclusively to the mission of the agency.

II. HOW TO DEVELOP A MASTER STRATEGY

In a general sense governmental agencies at all levels have been established in order to carry out the various federal and state laws and local governmental ordinances. For example, the defense of the nation is a federal responsibility, and in order to carry out this responsibility a U.S. Department of Defense has been created. Public education, on the other hand, is basically a state responsibility shared with communities in the state under the governance of local school boards--while trash collection is usually a function of the local county or city government. In order for the thousands of government agencies which exist in the nation to carry out their missions they must employ workers; that is, people who will perform assigned tasks, which, in the judgment of the governing body, contribute efficiently to the accomplishment of the mission assigned to the government agency.

Throughout the nation's history, government at all levels carried out its functions by directing the public workforce without the presence of a collective bargaining relationship. However, beginning in 1962, when President John F. Kennedy signed Executive Order 10988, the unilateral power of governmental agencies to direct their workforces began to change. Executive Order 10988 gave collective bargaining rights to most federal employees. Beginning with the signing of that Executive Order, collective bargaining spread relatively rapidly throughout the states, as one state after another adopted collective bargaining laws for public employees. As a result, as a practical matter, public employers at all levels of government no longer can unilaterally determine the compensation, benefits, and working conditions of public employees. In order to make such personnel decisions now, most governmental agencies must by law go through a collective bargaining process.

True, many governmental agencies (particularly school districts) for many years prior to collective bargaining did "confer" with their employees before making many personnel decisions regarding compensation, benefits, and working conditions. However, as experience has taught these governmental agencies, there is a drastic difference between "meet-and-confer" procedures and collective bargaining. Under "meet-and-confer" arrangements, the public employer would generally listen very politely to the views of employee committees and then proceed to make its decisions based upon its own values, giving whatever weight it wished to the desires of the employees. Under collective bargaining, however, the employer is usually required to function in certain ways. Under collective bargaining:

1. The employer will meet with representatives of the employees, whether the employer wants to or not.
2. The employer will receive proposals from the employees, whether the employer wants them or not.
3. Not only will the employer be required to review those proposals, but the employer will be required to discuss them.
4. Not only will the employer discuss the union proposals, but the employer will engage in "good-faith bargaining," a process of demonstrating sincere effort to reach an agreement through reasonable compromise.

5. In most cases, if the employer is unable to reach an agreement with the union, the employer will be subjected to impasse procedures.
6. In most cases the employer will not only reach an agreement with the union, but the agreement will be put in writing.
7. This written agreement, a labor contract, will be adopted by both parties and for all practical purposes becomes binding on both the employer and the employees.
8. If the employer fails to adhere to the terms of the labor contract, the employer will be required to take corrective actions through the requirements of a grievance procedure.

Should the public employer try to circumvent the requirements of the applicable collective bargaining law, the employer could be charged with unfair labor practices, and if found guilty, would be required to take appropriate corrective actions. As you can see, there is significant difference between "meeting-and-conferring" and collective bargaining.

For all practical purposes, public employers today must engage in a collective bargaining process before making personnel decisions regarding compensation, benefits, and working conditions. The question then becomes: How can the employer include collective bargaining in the overall business of managing government, so that the mission of the governmental agency is accomplished efficiently? This is where Negotiations Strategies becomes important. Before sitting down with the employee union, the management negotiator should have an overall plan for operations, i.e., a strategy.

The negotiations process can in almost all cases be broken down into a series of challenges, and if these challenges are successfully dealt with, then the negotiations process is bound to be successful. The challenges which arise in almost all labor negotiations are:

1. How to capitalize on current trends related to negotiations.
2. How to cope with various bargaining patterns.
3. How to maintain good human relations at the bargaining table.
4. How to overcome the major obstacles in negotiations.
5. How to avoid the common mistakes in negotiations.
6. How to control the scope of negotiations.
7. How to maintain the right and obligation to manage.
8. How to evaluate a negotiations proposal.
9. How to keep negotiations going.
10. How and when to compromise.
11. How to negotiate worthwhile benefits.
12. How to take some items back.
13. How to break temporary deadlocks.
14. How to cope with the tactics of the opposition.
15. How to avoid charges of unfair labor practices.
16. How to close negotiations.
17. How to use power in negotiations.
18. How to avoid and cope with strikes.

The reader will note that the challenges listed above are the titles of the various sections in this book. By learning how to deal with these challenges successfully, the reader will have gone far to develop an overall strategy plan.

A. Developing the Strategy Plan

1. Establish goals for collective bargaining

In too many instances, the public employer plays "defensive" bargaining. That is, the employer waits until the union brings in its proposals and simply responds to those proposals, item by item. This approach to bargaining is generally a one-way process, where the only question is how much of what the union wants will it get. Collective bargaining should be approached "offensively" by management, and the first step in "offensive" bargaining is to determine the goals for collective bargaining. The author has represented many governmental agencies and has found that they all share the same general goals for collective bargaining. Those goals are:

a. To provide "reasonable" salaries. "Reasonable" salaries are those which attract and maintain the type of employee which the public agency is able, and willing, to afford. This generally means providing a salary which is comparable to surrounding and competitive governmental jurisdictions. The rule of "reasonable" salaries provides no excuse for paying more than necessary and to pay more than what is necessary and fair is a misuse of public funds.

b. To provide "reasonable" benefits for employees. The rule to determine what benefits are "reasonable" is the same rule that applies to determining salaries. Benefits going beyond that which is necessary to attract and retain employees are generally unjustifiable.

c. To provide "working conditions" which are reasonable, fair, and equitable for the employees and which assure a good day's work for a good day's pay. In other words, the working conditions agreed to should not result in an overall diminution of the quality or quantity of work performed.

d. To retain the right to manage. The purpose of a governmental agency is to carry out the functions assigned to it. In order to carry out its functions, public agencies must hire employees. Somebody must decide how these employees are to perform in order to accomplish the mission of the agency. Deciding what work must be done by what employees and in what manner is the function of management. If management allows its management rights to weaken, the efficiency of the public agency will deteriorate. This reality cannot be overstressed. It is the function of management to direct the workforce. The process of collective bargaining should be used to bilaterally determine the rewards to employees for performing the tasks assigned to them.

e. To leave unencumbered the policy-making power of the governing body. All public agencies have an ultimate governing body. School districts have school boards to make policies. Counties have boards of supervisors to make policies and adopt ordinances. State agencies are (usually) responsible to the state legislature, which passes laws that state agencies must implement. Although most federal agencies report to U.S. department heads and the President, they ultimately come under the jurisdiction of the U.S. Congress. Regardless of the level of government, every public agency has a governing body which sets the policies for that agency. A primary goal of the management negotiator should be to see to it that the collective bargaining does not encumber that policy-making right and power; except in the areas of compensation, benefits, and working conditions. Naturally, the policy-making powers of the governing body are limited in these areas by the presence of a labor contract. It is the labor contract which fixes, for the life of the contract, the salaries, benefits, and working conditions of employees. To that degree, the policy-making powers of the public governing body are limited. However, in all other areas of policy-making, e.g., the setting of performance standards, the setting of the agency budget, the use of technology, the employment and dismissal of personnel, and the establishment of agency functions, should be left to the discretion of the governing body. However, when a government agency exercises its discretion in the various areas of management rights, and the exercise of that discretion has an impact on the compensation, benefits, or working conditions of employees, there is a likelihood that negotiations will be required regarding the impact of any decision on compensation, benefits, or working conditions. For example, in New York under the state's collective bargaining law, a school board is not required to negotiate specific class sizes. This is because the determination of class size is viewed by the state public employment relations board as a management prerogative vital to the carrying out of the board's obligation to manage public education. However, the impact of class size decisions on teacher working conditions is a required topic for bargaining. In other words, the local school board can decide how many students will be in each teacher's class, and the union cannot contest that. However, the union can propose that a teacher's salary should be increased when more than a specified number of students are placed in the class.

f. To assure that the labor contract brings a reasonable degree of labor peace during the life of the union contract. One of the fundamental purposes of a labor contract is to set down all of the employment conditions to which the parties have agreed and are willing to live under. If labor strife continues during the life of the union contract, then the process of collective bargaining has failed in some way. Granted, no labor contract is perfect or gives to the employees all that they want. But once the contract has been voluntarily agreed to, that should be the end of further demands by employees. Even if management fails to live up to the agreement as the union thinks it should, there is still no excuse for labor turmoil. The contract should have a grievance procedure which is designed to resolve accusations that management has not lived up to the terms of the contract.

2. Analize the various interest groups

The collective bargaining process is of interest to many parties--the governing body of the public agency, the governing body of the union, the chief executive, the management team, the negotiating teams, the chief negotiations, the union membership, and various public interests. In planning the negotiations strategy, the negotiator should give attention to each of these interested parties.

a. The governing bodies of most public agencies are very political in nature. Sometimes these governing bodies are composed of persons who are not trained in business or public administration. Sometimes there are persons on governing bodies who are simply seeking higher office. Frequently, these governing bodies include people with varying political ideologies. As a result (and unlike the normal board of directors in the private sector) public governing bodies are often unpredictable in their behavior when exposed to the collective bargaining process. Therefore, the wise negotiator should take special care in working out his relationship with the governing body. Generally, this means having clear direction from the governing body as to the latitude of authority given to the negotiator and establishing a communications system to keep the governing body regularly informed on the progress of negotiations.

Additionally, the negotiator should examine the past behavior of the governing body as it relates to the collective bargaining process. For example, some governing bodies have a history resisting union demands, while others have been inclined to be very generous in the relationship with the union. But, regardless of the nature of the governing body, the negotiator must follow one important rule above all others concerning relationships with the governing body. That rule is: The negotiator must have a clear mutual understanding between himself and the governing body as to his exact negotiations authority. In addition, the negotiator must have the support of at least a majority of the governing body for the negotiations decisions which the negotiator must make at the bargaining table. Failure to follow this simple rule is likely to hamstring the negotiator and create needless problems for the governing body.

b. The chief executive of any public agency, be he the superintendent of schools, the mayor of the city, or the head of a state department, has a vital stake in the labor relations program of the public agency. As the chief executive, he probably understands that the final outcome of the negotiations process can impact significantly upon his ability to run the agency. Therefore, the chief executive and the negotiator should have a close working relationship, from the beginning to the end of negotiations. As is also true of his relationships with the governing body, the chief negotiator should understand the operation model of the chief executive. Some chief executives delegate to an extreme degree. Such a method of administration will influence the modus operandi of the chief negotiator. On the other hand, some chief administrators become involved in all of the details of operating the public agency. Such behavior, also, impacts greatly on how the chief negotiator should proceed with the union. Whatever the nature of the chief executive, the labor negotiator should understand the operational methods of that person and adjust his own behavior to ensure that a workable relationship exists between the two persons.

c. The negotiating team is a very important group of people as far as the chief spokesman is concerned, since the individual team members must assist in the overall conduct of negotiations. Generally speaking, the team should have at least three members, and no more than five members. Any team smaller than three simply does not provide the needed manpower to carry on the negotiations process, while more than five regular members of the team creates a group too large to manage efficiently. The team members should be selected on the basis of their potential for contribution. This generally means selecting various persons who collectively have considerable knowledge of the bargaining unit being dealt with. For example, in forming a team to negotiate with the union of sanitation workers, the chief negotiator would likely want a line supervisor, a personnel supervisor, and the department head; making a team of four members that is well representative of departmental operations. In a school district of size, negotiating with teachers, the chief negotiator might want a curriculum supervisor, a principal, a personnel supervisor, and a director from the central office; making a team of five that is thoroughly knowledgeable of district operations. The chief negotiator should meet with the team prior to negotiations and provide a thorough orientation. The orientation should include such topics as: the role of each member, the nature of negotiations, schedule of meetings, etc.

d. The union team can be a significant factor in how well negotiations progress; therefore, the chief negotiator should make every reasonable effort to become familiar with the individual members on the union team and their job assignments, their tenure with the employer, their family status, interests, and special characteristics. Furthermore, the chief negotiator should attempt to determine to what extent the union team accurately reflects the wishes of the union members (and non-union members) and to what extent the union negotiating team is supported by the general membership. The chief negotiator should explore the recent operational methods of the union team in an attempt to anticipate the procedures that will be followed during current negotiations. By becoming familiar with the union team the chief negotiator has increased his ability to control the nature of negotiations, and thus increase the likelihood of an expeditious conduct of negotiations.

e. The employees of the agency are a group which must be seriously considered in labor negotiations. After all, negotiations are designed to provide a binding labor contract to govern the benefits and working conditions of all employees in the bargaining unit, irrespective of their union membership (or non-membership) and their support (or lack of support) for the union. Although in most cases management should view the union as the exclusive spokesman of the entire bargaining unit (as is required by law in most states where there is a public sector labor law), the union does not always accurately reflect the views of the employees. Therefore, management should have enough insight into the attitudes of employees to anticipate what their reactions will be to a given act by the employer. To be totally ignorant of the attitudes of the employees is to invite the union to mislead management into accepting otherwise unworthy proposals.

In assessing the members of the bargaining unit, a number of questions should be answered:

(1) What portion of the bargaining unit are union members? How loyal to the union are those members? The answer to these questions will help determine the extent to which the majority of employees will support the union in a true test.

(2) How much turnover is there in the bargaining unit? Are most of the employees long-term permanent employees? Although it's unwise to generalize on such matters, a unit which has a large number of temporary employees is not likely to support the union in a real show-down; whereas, a bargaining unit made up of mostly tenured emplcyees who have been union members for a long time is more likely to support the union in a serious conflict between management and labor.

(3) What has been the labor relations history of the union and the bargaining unit which it represents? If the history has been cooperative, then, barring any unusual events, the future should be much the same. On the other hand, if each year has experienced some form of labor strife, then such strife will probably continue.

(4) What type of day-to-day relationship exists between management and rank-and-file employees? If there is a good daily relationship between first-line supervisors and employees, and the employees view top management as fair and enlightened, there is less possibility that the union can lead the employees into destructive activities. However, if management is generally detested by the employees, the union has a ready-made situation for confrontation.

f. The citizens of the community where the public agency is located can be a vital factor in the final outcome of labor negotiations between the agency management and the organized employees. Viewed from the ultimate perspective, collective bargaining in the public sector is a struggle over to what extent the public will control the public employees and to what extent the public employee union will control the employees. In hundreds of sector strikes throughout the nation during the past decade--strikes by policemen, firemen, sanitation workers, teachers--the final arbiter has been the public. Often in public sector strikes, the final stage of the strike is a struggle between the public agency heads and the union leadership to convince the public as to what side the angels are on.

Generally speaking, the more involved the government agency is with direct services to citizens, the more likely the citizens are to become involved if there is a dispute between the employees of that agency and the governing body of the agency. For example, strikes in public school districts invariably involve parents. In such situations we find that the school board is trying to convince the public to support management's position, while simultaneously the teacher union is conducting an all-out campaign to convince the public that it is the teachers who should be supported.

Therefore, when entering into collective bargaining with public employees, the management team should assess thoroughly the relationship of the agency with its public community, and plan an overall negotiations strategy which takes this factor into account.

3. Establish a negotiations calendar

An important part of any negotiations strategy is to construct a time framework within which negotiations shall be conducted. Failure to develop such a framework can result in aimless, and endless, negotiations that can create long-lasting, bad employee relations. All labor negotiations should have a specific beginning and a specific ending. The beginning of negotiations should be far enough in advance of the agency budget adoption date to allow sufficient time for reasonable negotiations and sufficient time to resolve any impasse in the event that the parties cannot reach an agreement by themselves. In structuring the calendar for negotiations, a number of factors should be considered:

a. Are employees on some type of employment cycle? For example, is there a beginning to the work year and an ending? Are employees on annual contracts? The answers to these questions can help plan the negotiations strategy since there can be a relationship between negotiations and the employment cycle.

For example, in academia, schools generally start in the fall and end in June; consequently, negotiations often do not start before October and must usually conclude before the employees depart for the summer. Such a cycle provides a rough framework for the conduct of contract negotiations.

b. How much time is needed for negotiations? Although there is no set amount of time for all labor negotiations, the author has found that, in most cases, three months for negotiations is adequate if the parties enter into serious negotiations at the outset and mutually agree to a deadline. This three-month schedule presumes a willingness to perform all the homework required and a willingness to meet at least twice a week for three hours.

c. How much time is needed in the event of an impasse? Again, no single amount of time will be ideal for all cases of negotiations disputes, but if an impasse is reached, the author has found that about two months is needed to exhaust the complete impasse procedure.

d. What is the budget cycle? Since almost all labor negotiations involve budget and salary matters (except in the federal service, where such matters are decided by the U.S. Congress) consideration must be given to the budget cycle as it relates to collective bargaining. Generally speaking, the two should be developed together. Certainly, in most cases, the agency budget should not be finalized until the bargaining process has had a chance to play itself out. Otherwise, negotiations become a mockery, and the employees will realize this and find other channels for their demands.

e. What other factors might affect the negotiations schedule? Depending upon the governmental agency, there may be other factors which might have an influence upon the negotiations cycle. For example, an agency accustomed to a long Christmas holiday might consider that holiday as a timely point to conclude negotiations.

f. What other indigenous factors should be considered? Depending upon the agency, a number of other matters might be considered in developing the negotiations schedule. For example, will there be a change in the governing body during the negotiations process? If so, the presence of new members on the governing body can materially change the nature of negotiations; especially if the new members have been elected by union support! Or, perhaps a new chief executive is to be appointed during negotiations. If this should be the case, the chief negotiator may want to take a cautious route in negotiations, until the new chief is in charge. Or, are the employees in the midst of a representation challenge? This factor could cause the management negotiator to either expedite negotiations or to slow them down, depending upon the nature of the representation election.

4. Do your research

No negotiations strategy can be complete without a considerable amount of research in preparation for negotiations. Among the factors to consider in your research are:

a. What is the history of labor relations in the government agency? Barring any unusual developments, the past is usually a general indicator of the future. If relations have been good in the past, relations will likely be good in the future. If the union spokesman has been abrasive in the past, he will likely not change in the near future. Did the union prepare thoroughly for negotiations, or had it not done its homework? Has the union always had the support of the employees in the bargaining unit? Does the union adhere to the bargaining process or does it insist on bypassing the bargaining table and try to communicate with the public and to negotiate with the governing body? The answers to these questions will assist significantly in the planning of the negotiations strategy.

b. What are the outstanding problems between management and the employees? Whatever the problems, they will likely surface in some manner at the bargaining table. Therefore, management would be wise to anticipate these problems so that responses can be made ready. For example, one obvious problem which most employees face is lack of progress in purchasing power due to the ravages of inflation. It behooves the management of the public agency to accept the fact that this is a very real problem for employees. They must begin to find ways to minimize the effect of inflation and try to help the employees realize that much of the problem is beyond the ability of the agency to solve.

c. What grievances have been lodged during the life of the current labor contract? Grievances are frequently indications of problem areas in the contract. Granted, there are times that the union will encourage that frivolous grievances be lodged, but such behavior is the exception rather than the rule. And when such actions are taken by the union, there is often the justification (to some degree, at least) that management has done something which has offended the union.

d. Does the public agency have a complete set of agency policies and administrative regulations? For purposes in this section, "policies" refer to the governing ordinances of the agency; while "administrative regulations" refer to the rules established by the executives (management) to carry out the policies. A government agency which has incomplete, or improperly prepared, policies and regulations (particularly if in the area of personnel policies and regulations) is inviting the union to write the policies and regulations. On the other hand, if the government agency has complete and thorough policies and regulations, they can be a fortress from which to bargain.

e. Does the present labor contract need modification? Management should keep a record of complaints about the current labor contract and a record of any problems which arise. Then at the first or second negotiations session, management should propose appropriate changes in the contract. Naturally, just as the union does not expect to obtain all of its proposals, management, too, should be prepared to give up some of its proposals to change the labor contract.

5. Develop a strike plan

No public agency, regardless of its nature, should enter into collective bargaining with an exclusive representative of the employees without having developed a thorough contingency plan for the event that all, or even a portion, of the employees should engage in a labor strike. Since the mid-1960s, there have been hundreds of public employee strikes in all areas of government service, and almost all of them were illegal. The number of public sector labor strikes since the mid-1960s has been greater than all of the public employee strikes since the founding of the nation, and practically every one of these strikes took place after the various states approved public sector collective bargaining laws--all of which were supposedly designed to "maintain labor peace." In most of these hundreds of strikes, the public agency was forced to make concessions which it otherwise would not have made, thus making it clear to public employees that strikes pay off.

But it has not been the strikes alone which have exacted unplanned concessions by government agencies, but the threat of strikes. For every strike held, there have been ten threats to strike. Over many years the author has observed that the threat of a strike often seems to exact more concessions from an employer than the strike itself. It appears that it is the fear of the unknown which causes management to make these concessions. The advantage of using the strike threat is that it can be prolonged in order to obtain many concessions, while the strike itself often loses its effect after a period of time.

A strike plan is valuable for two major reasons, the second reason being far more important than the first:

a. A strike plan provides a contingency for how to operate the government agency should all or a portion of the members of a bargaining unit go on strike. Although this topic is covered in more detail elsewhere in this book, suffice it to say now that the major objective of a strike plan should be to keep the public agency operating during the strike. There is no single act which will bring employees back to the job quicker than keeping the agency open for business. After all, the whole purpose of a labor strike is to close the operation; creating so much turmoil that the agency has no choice but to capitulate to the demands of the union. If the agency is able to operate despite the strike, the effectiveness of the strike has been materially diminished.

b. However, the major purpose of a strike plan is to provide confidence in the conduct of negotiations. Many management negotiators have admitted that their conduct at the bargaining table was indirectly affected by the knowledge that, if certain concessions were not made, there would be a strike. The threat of a strike is always present. The only question is how immediate it is. By having a plan which prepares the employer for the ultimate power play of the union, there is less likelihood that the chief negotiator will be intimidated by the demands of the union.

Incidentally, a side effect of having such a strike plan is that the union usually discovers that some such plan does exist, and this discovery usually indicates to the union that management will not be easily intimidated. As a result, negotiations are likely to proceed more smoothly.

6. Prepare responses

The most important part of getting set for negotiations is the preparation of responses to the union's list of demands. Although this topic is discussed in detail in the section entitled, "How to Evaluate Demands," a brief statement is appropriate here. There are five basic steps to preparing responses to the union's total list of proposals. Those steps are, in proper sequence:

a. The demands are classified in one of five categories, based on face value of the demand. The first category is for demands which are acceptable without modification. The second category is for demands which can be made acceptable with modifications. The third category is for demands which are not acceptable, unless something unforeseen arises. The fourth category is for demands which will not be accepted under any conditions, including a protracted strike. Items which are nonnegotiable are placed in the fifth category.

b. The next step is to analyze each demand thoroughly. This process entails becoming familiar with all facets of each proposal. The ultimate objective of this step is to become the foremost expert on both teams regarding each union demand. This process includes costing out each item; identifying direct and indirect costs, as well as short- and long-range administrative costs.

c. The third step in preparing responses consists of the actual preparation of counterproposals for those items which are to be bargained over. These counterproposals should range from that counterproposal which is most acceptable to management to that counterproposal which is least acceptable, but still acceptable under the proper conditions. In preparing one's own counterproposals, an effort should be made to empathize with the opponent and prepare counterproposals from the opponent's point of view. By doing this, the area for final agreement on each issue can be generally identified.

d. The fourth step is to rank all union demands and management positions. This means that the union demands which are most acceptable and least acceptable should be placed in order. It also means that any "demands" by management should be given their proper priority. Failure to perform this step results in unbalanced trade-offs in the bargaining process, leaving unresolved items on the table with little hope of these items being resolved amicably.

e. Now comes the hard part, which is the grouping or "packaging" of items together. Basically, this involves deciding how to use items in categories one and two, in order to trade off all other union demands. This last step tests the real skills of the negotiator. For more complete explanation of this process, see the author's book, Bargaining Tactics.

III. HOW TO DEAL WITH MAJOR BARGAINING STYLES

During the period of many years of negotiating labor contracts with a variety of unions and under many differing situations, the author has concluded that most negotiating experiences can be categorized according to one of at least a dozen styles. Not all negotiators follow only one style. Some mix their styles. But in some way almost all negotiators have styles which can be identified. By being able to identify such styles, the opposing negotiator improves his opportunity to maintain the advantage in negotiations. The major bargaining styles are:

1. Boulwarism

Lemuel R. Boulware was the Community and Industrial Labor Relations Director for General Electric Corporation from 1947 until 1960. His approach (referred to as "Boulwarism") to labor relations was multi-faceted, in that many techniques were used including employees and supervisor education programs on work efficiency, educational programs on taxes, economics, and the market system. Through such programs, Mr. Boulware tried to foster employee loyalty, satisfaction, as well as employee profit and satisfaction.

Most of his program was based upon direct preparation with employees and the community. As far as actual negotiations were concerned, he stated, "A union contract was then, as it is now, largely a collection of concessions by the employer; there was little or nothing of importance the union was to do; and in any case, contracts had come more and more to be enforceable against the employer only."[1] The first use of Boulwarism was in 1948. According to Mr. Boulware, "The initial silence on the union front, which followed the 1948 settlements, did not last long. Our willingness to put everything on the table at once and our thorough and accurate preparation in making up the package seemingly had not only surprised most of union officialdom but also caught them with no ready-made answers simply because they had no experience in a situation of that kind."[2]

In essence, Boulwarism is a management style of bargaining. Under the approach used by Mr. Boulware, management views the actual negotiations process as only a small part of a total employee relations program designed to maintain an efficient and loyal workforce. Under this system, management conducts educational programs and public relations programs in preparation for negotiations. The actual management position for negotiations is prepared carefully through extensive research. When it arrives at the bargaining table, there is little left for management to do but to state its position on all items. This negotiations style bypasses most of the game playing and posturing at the bargaining table. Mr. Boulware viewed such posturing as dishonest and a waste of time. As far as he was concerned, management should make its best final offer at the outset of negotiations and dispense with the histrionics.

Unfortunately, this approach to bargaining, although never proven illegal, has not found much success; primarily because unions find such an approach to be a hostile act on the part of management. Furthermore, mediators, fact-finders, arbitrators, state labor relations agencies, and judges do not appear to favor such a bargaining style. The conventional wisdom seems to indicate that both parties should take an artificial (and dishonest?) position at the outset of negotiations, then gradually follow an unwritten scenario to reach positions beyond which both knew they would not go at the outset of negotiations. Consequently, Boulwarism has been used very little in either the private or public sectors since the passage of the National Labor Relations Act and the various state bargaining laws.

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[1] The Truth About Boulwarism (Washington, D.C.: Bureau of National Affairs, Inc., 1969), p. 88.

[2] Ibid., p. 97.

However, a form of Boulwarism seemed to emerge with the economic crunch in the late 1970s. At that time an increasing number of unions were faced with what amounted to ultimatums from employers (remember Chrysler Corporation?). Obviously, when a company is on the verge of bankruptcy there is very little the union can do other than to cooperate to keep the company alive. The only other choice for employees under such conditions is to become unemployed. A growing number of government agencies find themselves in circumstances similar to that of an alarming number of private companies. They have reached their limits of affordability. As a result, management arrives at the bargaining table with, in effect, nothing left to give. In the advanced stages of fiscal collapse, management finds itself in the position of indicating that certain labor contract benefits must be discontinued. For more information on how "retrogressive" bargaining is conducted, read "How to Negotiate Retrievals." As summary advice, however, Boulwarism should not be used in most bargaining situations unless there is justification for it.

2. Emotionalism

Some negotiators practice a form of negotiations which can be referred to as "emotionalism." Under this approach to negotiations, a variety of techniques is employed to appeal to the emotions of anybody who can influence the outcome of negotiations--the opposing team, the governing body, the union membership, the public, the press, etc. The use of emotionalism can be practiced more effectively in the public sector than in the private sector. In the private sector there is usually only one overriding issue, and that is "profit." At the bargaining table in private industry the overriding influence of this one factor forces all union demands and all company concessions to be evaluated in terms of their impact on company profit and survival. While in the private sector economic issues may actually take a back seat to political issues and to the personal ego motives of those with an interest in the bargaining process. Those readers who wish to understand more about the differences between collective bargaining in the private sector and collective bargaining in the public sector should read the book, Bargaining Tactics.

Emotionalism in negotiations is practiced in a number of ways:

a. The negotiator appeals to the virtues of anybody who can influence the outcome of negotiations. This technique involves the transference of guilt to the employer for any unsatisfactory condition which employees face. Since most employers are basically humane, they are inclined to want to help those who face problems. Should the employer refuse to recognize the problems of employees, then the employer is made to appear to be the "bad guy," which, of course, is a normal objective of the union. A question like: "Don't you care about the welfare of your employees?" is designed to elicit only one answer. "Yes." With such an answer, the union proceeds to the next statement, which might be: "Well then, you must accept our proposal which is designed to solve the employees' problems." Such questioning is designed to shift the burden of solving a problem to the employer. If the union can achieve this, it has made significant progress in obtaining a concession from the employer.

b. Emotionalism is frequently used to rouse the union membership. After all, a union can survive only as long as it has members and in order to keep its members, it must constantly remind the membership that it is owed something by the employer. In order to accomplish this, union leaders often appeal to the emotions of the membership rather than to the intellect. How many times have we observed union leaders exhorting the membership to be united in its fight to overcome "oppression and exploitation?" That's standard fare in the union business.

c. Emotionalism is used to distract attention from the real issues. By keeping negotiations in a constant state of stress, the employer is much more likely to make concessions just to pacify the situation. This tactic is particularly effective in a public situation where there are mixed political interests. In such a situation, the union remains the only united force, whipsawing one political faction against another in an effort to gain bargaining concessions.

3. Mutual satisfaction

For reasons which are often quite complex, some labor negotiations seem to operate under rather unusual guiding principles, which are:

a. No direct or indirect force or the threat thereof will be used to obtain a concession from the other party.

b. Both parties will be honest at all times.

c. No agreement will be entered into unless both parties have an equal gain.

Granted, not many rounds of negotiations take place following such ground rules, but under the right conditions, such rules can work. If the employer is enlightened and unthreatened, and if the union is trusting of the employer and secure in its own relationship with its members, there exists the potential for negotiations through mutual satisfaction.

Unfortunately, there are so many factors which militate against mutual satisfaction bargaining, it is not a style which can be relied upon in most public sector situations.

4. Conceptual bargaining

One of the author's first experiences at the bargaining table involved "conceptual bargaining." In that instance the union simply presented a list of "issues" which needed to be addressed from their point of view. Since the author was somewhat inexperienced at that time, and since bargaining was taking place for the first time in that state (and the state law was silent on the subject of how union demands must be presented), the author proceeded with negotiations on the basis of a list of concepts. Of course, today, no experienced negotiator would do that, but one must take into consideration the context of the time and place.

The list presented by the union included such issues as:

a. "Improved salaries for employees."

b. "Better medical care for employees."

c. "More mutual satisfying relationships between the union and the employer."

d. "Democracy at the work site."

Obviously, such an approach to bargaining is designed to get the employer to agree to a concept, rather than specific demands. Once that is done, the first step had been taken to a concession by the employer. Fortunately, in the real-life experience related here, a reasonable contract was finally worked out, but not without some wasted effort and some narrow escapes.

As any experienced negotiator knows, an advantage is usually gained if the first concession is made by the opposing party. Concept bargaining is one technique used to manipulate the employer into making the first move. For example, the union asks: "Aren't you in favor of at least trying to allow your employees to keep their present earning power?" If a "yes" answer can be obtained from these questions, the next statement by the union should be: "We appreciate your commitment to helping our employees maintain their present standard of living." By using this technique, the union, step by step, can bring management closer to an initial offer of the current Consumer Price Index for the past year. Once such an offer is made by management, it becomes only the initial offer.

5. Win at any price

Some employers and some unions are so set on "winning" (ideally, both parties should be winners in negotiations) that they win the battle but lose the war. This "win-at-any-price" approach to negotiations only creates losers in the long run, because the "win-at-any-price" strategy entails such horrendous costs that the victory becomes greatly overpriced.

One need only look at the American automobile industry to observe how the unions won for a period of time, but ultimately lost. Granted, there were a number of unnecessary and artificial forces which ruined the industry (mandated safety measures, mandated environmental controls, subsidized oil prices, high taxes, etc.), but mandated bargaining under federal law played its part in the demise of the auto industry. After thirty years of bargaining with the United Auto Worker Unions (and other unions), the average Detroit auto worker was making at the end of the 1970s almost twice the wage and benefits of comparable workers in other industries. The financial impact of this irresponsible (but unavoidable) circumstance allowed other nations to take the leadership in a field which the world had long viewed as the natural right of America.

The "win-at-any-price" approach to negotiations works no better in the public sector than it does in the private sector. One need only observe the labor relations history of New york City to see the folly of such an approach to collective bargaining. When either a union or the governing body of a public agency is faced with an opponent which has demonstrated that it will stop at nothing to win, even if winning means the destruction of the agency, the response is usually in-kind. After all, what are the choices? No governing body can permit a union to take over the agency, and no union is likely to allow the employer to effectively destroy the union. Fortunately, such violent confrontations are infrequent, but when they do occur, they must be dealt with firmly.

6. Limited demands

Although the most common approach to bargaining by unions involves the initial presentation of a long list of demands, occasionally a union will use the "limited demand" approach. This negotiations strategy entails the presentation of a short list of demands; demands which the union considers of the highest priority. Sometimes the union will present this short list with a statement like: "We are presenting to you a very conservative list of demands this year because we have temporarily set aside other needs which we normally would have presented. But in the interests of saving time and as a demonstration of good faith and trust, we are asking that all of these proposals with only minor modifications be accepted. Should this not be possible, we will have to reconsider our position." The last sentence is obviously designed to intimidate management into making major concessions to the short list in order to avoid dealing with a much longer list of demands.

Surprisingly, this technique can work for the union under certain circumstances. In a few situations, this approach might even be better for management, especially if a longer demand list from the union will result in additional and unnecessary concessions by management.

Under normal conditions, the union would be restricted to negotiation on its original short list of demands, since common practice requires that the union present all of its demands at the first bargaining session. Should that be the case, management would be well advised to accept the short list as a basis of negotiations, and then proceed as it normally would. If this approach is not acceptable to the union, then management should call off the first negotiations session until the union has submitted its entire list for negotiations. Here is one important admonition, however. An effective union negotiator can take any short list of demands and through creative counterproposals expand this list to include new items which management had previously thought would be precluded from negotiations. Should the union use this approach to an extent that constitutes improper bargaining, then management should inform the union that it will not respond further to such uses of the negotiations process.

7. By-pass negotiations

Unlike the private sector, labor relations in the public sector are often carried out in a highly politically-charged environment. This means that negotiations frequently take place between persons other than the two chief negotiators. Some of the worst experiences the author has endured have involved trying to anticipate "end-runs" by the union. An "end-run" takes place when the union negotiator engages in the unethical practice of by-passing his counterpart in order to deal directly with other members of the management team--usually the chief executive (superintendent or mayor) or the governing body. In all fairness, the same practice has been attempted by management when it by-passes the bargaining table in an effort to negotiate directly with the employees. In either case, the practice is unwise because it undermines the organized process of collective bargaining.

The best remedy for such improper tactics is for each negotiator to prepare his constituents for such possible "end-runs." The union leadership should describe the technique to the union membership and instruct the members not to respond to such a ploy. Similarly, the management negotiator should alert his principals to the possibility of a similar attempt by the union and remind the management team to ignore such efforts.

8. Divide and conquer

Another major bargaining style experienced by the author involves attempts by either side of the bargaining table to weaken the other's position by undermining the opposing group's unity. Obviously, this is the commonly-used "divide-and-conquer" approach to labor negotiations, and it sometimes is quite successful. This strategy of negotiations which takes advantage of divisiveness can be applied by either party. When used by the union, it can be used to divide the members of the opposing team, to divide the chief negotiator from his chief executive, to divide the chief executive from the governing body, or to divide the governing body from its constituents. When used by management, it is similarly used to divide the various subgroups within the union.

The author recalls one particularly vivid experience of the use of the divide-and-conquer strategy when he was a consultant to a very large city school district on the East Coast. In that city the school board was composed of eleven members. That fact alone should point out potential trouble to any experienced negotiator. But in this particular case, the board was already divided for a number of reasons. The most damaging, however, was that at least one member was clearly elected to the board for his promise to support the teachers' union. During negotiations there was a continuous leak of confidential management bargaining positions to the union. With a little bit of detective work, which among other things involved following a board member late at night, it was discovered that the one board member in question was making regular visits and telephone calls to the union after each executive board meeting! Understandably, successful negotiations from management's point of view, was quite difficult under those conditions.

A part of any labor negotiator's job is to educate his people as to the process of negotiations and the type of tactics and strategies which might be employed by the opposing group. By providing such an education to the party that he represents, the negotiator will worn his group of the divide-and-conquer strategy and advise all members that such approaches should be resisted. Should any member become a party to such improper behavior, that person should be isolated from any meaningful role in the labor relations process.

9. Chaos bargaining

There are negotiators who seem to have a bargaining style based on the concept that if the bargaining process can be confused enough, management will somehow make meaningful concessions. The truth of the matter is, however, that such a crude tactic does work on occasion. Usually, this style is common to the inexperienced or incompetent negotiator, but once in a great while, the style is used purposefully.

The author recalls a set of negotiations conducted with a union of custodians and maintenance workers, which was represented by an experienced and professional union spokesman. In this particular case, the union spokesman made no positive efforts in negotiations. He was never prepared. He missed meetings. He called meetings at unusual times. He was constantly profane and obscene. He lied. In my opinion, he broke every rule that an ethical and professional negotiator should follow. Some quick and superficial investigation of the man's modus operandi revealed that he employed this strategy in situations where there was evidence that the governing body was weak and divided--as was actually the case in the situation being related here.

Two tactics seemed to avoid some of the serious problems faced by management in this situation, however. First, the negotiator had a special meeting with the governing body in executive session and explained what the union negotiator was trying to do. Second, at the appropriate time, management made a "final" offer, leaving the union with only three choices: accept the offer, call for mediation, or take some concerted action of force. The union chose mediation. The mediator did not tolerate any antics from the union spokesman and a settlement was quickly reached through the efforts of this skillful mediator.

10. Disciplined bargaining

In a curious way, the negotiator who is in total control of his situation is sometimes the easiest to work with. Such a person is usually secure in his job and skillful in the performance of his task. In dealing with such a style, one usually finds a number of negotiations' characteristics present:

a. Only the chief spokesman speaks on a matter related to negotiations.

b. Any tentative agreement offered by the negotiator is always delivered.

c. All meetings are conducted in a business-like and decorous fashion.

d. Honesty is the keynote of all meetings.

e. Creative solutions are found to almost all problems.

f. Negotiations take place without any threats.

g. Mutual respect is present at all times, even when difficult issues divide the parties.

h. The membership is united, but more importantly, their positions are clearly communicated.

Although disciplined bargaining is often the easiest to deal with, one caveat must be stated. A negotiator (for management or labor) who practices disciplined bargaining must be dealt with seriously. Such a person cannot be taken lightly. When such a negotiator states that a given offer is not acceptable, such a statement should be accepted on its face value. In other words, everything that such a negotiator says can be believed.

11. Stonewalling

Experienced negotiators have probably encountered occasions when one party becomes intransigent on some aspect of the issue under consideration. When intransigence is practiced as a premeditated bargaining strategy, it is usually referred to as "stonewalling." On the surface, stonewalling and Boulwarism might appear to be similar, and they are, except for one crucial point. Boulwarism is a negotiations process based upon education and honest research. It is a process of coming quickly to that position which management can reasonably afford, and which is fair to the employees. Stonewalling, on the other hand, is based less upon research and fairness than on brute force and selfishness. Such stonewalling is usually accompanied by a proven presence of force, while Boulwarism takes a negotiations position irrespective of power and force.

Occasionally, stonewalling will be practiced by a union which is in power, but is being opposed by another union competing for recognition. In such a situation, management can become trapped in the crossfire generated by each union as it tries to prove it is the better. In an effort to prove its toughness, the union in power is sometimes forced to stonewall negotiations out of fear that any concession will be viewed by the members as a sign of weakness. Although stonewalling never works as a permanent style of bargaining, it can pose a serious problem when it does occur. And, while in some cases there may be no immediate answer for the strategy, a few tactics are often helpful in overcoming stonewall bargaining:

a. Patience and persistence often play a part in breaking through a stonewall and extracting concessions. Time does play its part in negotiations, but it is a two-edged sword. So, the smart negotiator carefully assesses whether time will work an advantage or disadvantage.

b. A cooling-off period can often assist in making the parties more receptive to negotiations. However, if an urgent deadline is looming, such a delay may not be possible.

c. In some cases, stonewalling can be overcome by some form of impasse resolution, such as mediation or fact-finding.

Sometimes the presence of a third neutral party in negotiations can provide the needed ingredient to reopen negotiations.

IV. HOW TO MANAGE HUMAN RELATIONS

Negotiations under collective bargaining is adversary in nature since the parties involved (management and labor) are frequently pursuing opposite goals at the bargaining table. While management seeks to control costs and retain the right to manage the government agency, the union seeks to expand costs (through increased benefits and reduced workload) and gain greater control over the work performed by the employees. Although the parties may eventually reach an agreement, such an eventuality does not negate the adversary nature of the negotiations. Under such a relationship, an agreement is difficult under the best of condition.

If poor human relations exist, progress toward an agreement is made even more difficult. Therefore, the wise negotiator makes every effort to manage the tone of human relations at the bargaining table. After all, trust and friendship between the two negotiators is a valuable asset to both. Under normal conditions, both parties will make concessions in order to maintain the trust and friendship of the opponent.

A. Techniques for Good Relations

During many years of negotiations, the author has found that the skilled negotiator can usually influence the tenor of human relations at the bargaining table by employing a number of techniques. Among these techniques are:

1. Establish mutually agreeable ground rules

Although this topic is discussed in considerable detail in the author's book, Bargaining Tactics, the topic deserves brief mention here. Good human relations can be seriously risked if the two parties have no agreement on how negotiations are to be carried out. The absence of such an understanding is likely to cause unnecessary disputes over procedural matters which, under proper conditions, should be matters of simple routine. Such routine matters of procedure include such items as:

a. How will press releases be made during negotiations? Press releases throughout negotiations (that is, until a final written contract is signed) should only be by mutual agreement.

b. Where will meetings be held? Meetings are held at mutually agreeable places. Naturally, management should hold out for using management property.

c. How long will meetings last? Negotiations sessions should generally be held to about three hours. Exceptions, of course, can be made based upon common sense.

d. How often will meetings be held? The frequency of meetings is determined by mutual agreement of the parties. Normally, however, twice per week is sufficient.

e. How will tentative agreements be recorded? Although either party can keep whatever records it wishes, the joint record of tentative agreements should be initialed by both parties, and copies of the signed tentative agreements retained by both parties.

f. When may observers be present? Persons other than those on the two negotiations teams should be admitted to sessions only by mutual agreement.

g. When will negotiations end? A mutually agreeable time schedule should be developed for negotiations. This time schedule should have a specific date by which negotiations must begin, a specific date by which time if no agreement has been reached the parties are at impasse, and a specific time by which impasse proceedings must be concluded. This last deadline should be in advance of the budget adoption date of the government agency involved.

h. What happens in the event of an impasse? Absent the right to strike in the public sector, negotiations impasses are to be expected regularly. Therefore, there should be an agreement as to how impasses are to be resolved.

i. How will the final agreement be made official? The final document agreed to by the negotiators should be ratified by the union membership, while the governing body of the government agency should take whatever action is appropriate to consummate the tentative agreement. Naturally, this assumes that both the union membership and the governing body of the governmental agency approved of the recommended labor contract.

All of these questions, as well as other questions of procedure, must be answered to the satisfaction of both parties so that the parties may concentrate on the main purpose of collective bargaining--which is to come to an understanding as to what will be the salaries, benefits, and working conditions of employees.

2. Establish authority and credibility

Good human relations can be enhanced if the negotiator has the recognized authority to negotiate and if the negotiator is trusted by the opponent. Failure to establish the negotiator's authority will likely undermine the needed commitment to the negotiations process. Failure to establish the negotiator's credibility will similarly undermine a productive working relationship between the parties.

From the outset of negotiations, it should be made clear that the negotiator speaks for his/her constituents, and is fully possessed of all necessary authority to make concessions, to make offers, and to enter into tentative agreements. From the outset, the negotiator should demonstrate an intention to be honest and above-board. The combination of perceived authority and credibility will go far in controlling the emotional tone of negotiations.

3. Admit errors (sometimes)

Just as a polished gem is the result of friction, so does a negotiator become an expert by the friction of errors. In his book, Bargaining Tactics, the author describes some 300 bargaining techniques, many of which have been learned through error. Every negotiator is bound to make errors, but the lessons learned from those errors are often more beneficial than the errors were harmful. Therefore, the negotiator should not engage in self-destructive self-criticism over inevitable mistakes. When an honest error has been made (especially when it is obvious that an error has been made), the wise and secure negotiator should admit the error, because such honesty contributes to one's credibility at the bargaining table and helps create an atmosphere of trust.

4. Establish a positive physical setting

Contrary to the popular myth that real labor negotiations take place in smoke-filled rooms, the best negotiations take place in rooms with clean air, comfortable furnishings, and tasty refreshments. Such rooms should contain a very large table of sufficient size to accommodate all members of both teams and their papers. The chairs should be comfortable, and the lighting should be pleasant, while the internal temperature should be such that it is unnoticed. The room should be large enough for members to move around in, and should be situated in a location that is free from distractions. Although all parties should refrain from smoking while in the negotiations room, some persons are unable (or unwilling) to refrain from such a habit. In such cases, an air purifier should be installed, if possible, or other means should be employed to circulate fresh air.

Aside from the negotiations room itself, there should be another smaller room large enough to accommodate either team when a caucus is necessary. This room, too, should have a table and comfortable chairs. A private telephone should also be available nearby, and restrooms should be conveniently available. A duplicating machine is advisable so that either party can make copies of various documents as needed. Failure to provide a pleasant physical setting for negotiations simply adds one more unnecessary obstacle to maintaining good human relations at the bargaining table.

5. Be careful of management demands

Some inexperienced negotiators have tried to turn the tables on the union by making demands of employees at the bargaining table, just as the union makes its demands of management. This approach to bargaining seldom works, because management demands often infuriate the union and create a hostile atmosphere for negotiations. All laws which govern collective bargaining in the private and public sectors were created by pressure from interests more supportive of unions and employees than of owners and managers. As a result, unionized employees universally view collective bargaining as a process designed to aid employees and their unions in using their collective clout under the protection of law to extract better compensation for less work. Under this concept of collective bargaining, unions are supposed to make demands, and negotiations becomes the process by which a determination is made of how many of these demands will be met--a kind of one-way street.

With such a view, is it any wonder that unions react violently to any demands made by management at the bargaining table? To avoid such unnecessary acrimony, the author maintains that management needs to make very few demands of the union. After all, under most conditions management already has the right to make most decisions regarding the business of the agency; therefore, there is seldom a need to make demands of the union. In most cases, any management need which must be met at the bargaining table can be handled through the tactful use of "counter-proposals," a process whereby management simply responds to a proposal by the union. This method is much less likely to escalate emotions at the bargaining table, an objective which should be kept clearly in view at all times.

6. Avoid overkill

One of the many axioms that the author has discovered in his years of experience is this one--use the minimum ammunition possible in achieving your objective. This means that each individual agreement should be accomplished with as little testimony and argumentation as possible. Where one good reason is sufficient to reject a demand, it is a mistake to give three or four reasons. The second, third, and fourth reasons progressively increase the irritation of your counterpart, a normal reaction to "overkill" in negotiations.

7. Use pleasant language

Words are the best indicator of a negotiator's position on a topic under consideration; therefore, words should be chosen carefully. In structuring responses to union demands, a number of simple rules should be followed:

a. Never use profanities, vulgarities, or obscenities. Not only will such terms offend most people, but such expressions often are not clear forms of expression, and successful negotiations depend upon unambiguous communications.

b. Avoid references to topics which have prejudicial or controversial implications. For example, unkind remarks about "liberals" will inevitably alienate someone on either team. Similarly, any disrespectful remark about "conservatives" is also bound to offend somebody; while any comment concerning religion is also certain to offend someone present.

In summary, do not make any statement which unnecessarily offends anyone, even if the comment is totally unrelated to topics under negotions. The author remembers one instance when he was foolish enough to express his personal views on a controversial issue. Several members on the union's team were of an opposing view, and, as a result, this difference of opinion surfaced several times during negotiations and created an unneeded obstacle to good human relations.

8. Demonstrate understanding of the problem

Although many union demands are frivolous and introduced for "padding" purposes and shock value, some demands represent accurate and sincere expressions of credible needs and problems of employees. The perceptive negotiator will detect the real and important issues and proceed to deal with them. One technique in controlling the emotional tone of negotiations is to demonstrate understanding of the important issues. One way to do this is to repeat the union proposal in your own words. This technique not only serves as a test of your own understanding of the problem, but it indicates to the union that management has grasped the essence of the problem under discussion. Understanding of the problem is the first step to resolution of the problem.

9. Praise the union and its members

Under normal circumstances, human behavior is modified in a positive direction through praise rather than through criticism. The negotiations process provides so much opportunity for ill will that no chance for kindness should be overlooked. Whenever the union makes a proposal or counterproposal which is acceptable to management, the chief negotiator should praise the union for its contribution. Praise is even more appropriate when the union offers a solution to a particularly complicated issue which has been under intense negotiations for a protracted period of time. Such positive reenforcement of the union's efforts will pay dividends in the process of maintaining cooperative human relations at the bargaining table.

10. Learn the many ways to say "no"

Most of the proposals submitted by the union will not be acceptable as presented. Consequently, management must respond with various forms of rejection. Part of good human relations at the bargaining table depends upon how rejections are communicated. There are many ways to say "no" at the bargaining table and here are some of them:

a. Find something positive in the union's proposal and stress that, rather than that which cannot be accepted.

b. Suggest alternative solutions. Rather than reject an unacceptable proposal, offer simple alternative solutions to the union's problem. This is another way of stressing the positive and deemphasizing the negative.

c. Retreat to limited authority. Some proposals ask for so much that they may be beyond the authority of the negotiator. In such cases, the negotiator may inform the union that he does not have the authority to agree to the union's proposal.

d. Play multiple choice. When a union proposal is unacceptable you can sometimes offer two or more choices acceptable to you. This is another form of offering alternatives.

e. It is administratively unsound. Some union proposals are unacceptable because they cannot be administered efficiently. For example, the union may ask that the employer keep an hourly record of annual leave. In most instances, such a proposal would be administratively unsound.

f. The proposal concerns those outside the bargaining unit. Occasionally, a union will make a proposal which affects the benefits or working conditions of employees in other bargaining units. For example, a teachers' union might ask that custodians clean teachers' classrooms every day after 4:30 P.M. By informing the union that such a proposal must be discussed with the custodians, a direct rejection is avoided.

g. It is illegal. In order to meet some union demands, illegal action would be necessary. For example, to agree to a closed shop would be illegal; therefore, the response of management is that the granting of the union's request would require illegal action. Again, a direct "no" has been avoided.

h. Change the proposal. If you can't accept the proposal in the state presented at the bargaining table, change it! For example, the union proposes a sick leave bank which is unacceptable to management which responds with a proposal for one day of additional sick leave.

i. Cannot afford it. Although a management negotiator should be very careful in offering inaffordability as a reason to reject a proposal, there are occasions when the answer will suffice, but be careful. As stated elsewhere in this book, the response of inaffordability opens up negotiations on the subject of affordability and may subject the topic to impasse proceedings.

j. The proposal is not negotiable. In the section on the scope of negotiations, numerous suggestions are given for controlling the scope of negotiations. By maintaining that a subject is nonnegotiable, the spokesman has again avoided a direct "no."

k. Ignore some proposals. Sometimes a rejection of a proposal can be achieved by simply ignoring the subject. After awhile, the union gets the message without management ever offering an outright rejection.

In summary, the maintenance of good human relations at the bargaining table is just as important as the quality of proposals and counterproposals made. The author has observed a number of instances when a very good labor contract was negotiated more through the practice of good human relations than through the skillful use of bargaining tactics.

V. HOW TO OVERCOME MAJOR OBSTACLES

As the American economy continues to stagnate during the 1980s, the public sector will no longer have the financial resources to support much that existed until that time. The significant development in public service during the 1980s will be how to make do with less! In other words, the test of government in the 1980s will be to find how to be more productive with less resources. There are a number of obstacles in the public sector that are more productive with less, however. Unlike the private sector, which, in order to survive, must be responsive to customer demands, the public sector has a number of impediments to improved productivity?

1. Public employees have political power to resist unwanted improvements in productivity

Unlike employees in a private company who have no control over the appointment or behavior of the company's board of directors, public employees (teachers especially) have considerable power in influencing both the selection and behavior of their employers. For example, in hundreds of communities, organized teachers have played a decisive role in who is elected to the school board. After being elected by their employees to such a position, these school board members are continuously subject to political pressure when the school board attempts to undertake productivity improvements which do not meet with the approval of the teachers.

2. Most public employees have collective bargaining rights

Not only do public employees have the power to resist unwanted productivity changes through political activism, but they can also resist through collective bargaining. Naturally, most attempts at improved productivity involve changing "working conditions," a mandated topic of bargaining in almost all situations. Public employees will usually resist such changes aggressively, since such improvements are often seen by employees as demands for more work.

3. The work of public employees is often prescribed by law

The work of many public employees (e.g., policemen, teachers, firemen, etc.) are often defined by some legal provision, such as a civil service regulation. Before the work of these persons can be changed substantially, those regulations must first be amended. As a result, improvements in public sector productivity are further hampered by such obstacles.

Take teachers as an example. School boards are considerably restricted in their freedom to change the workload of teachers because there are numerous overriding provisions of law. Most states have imposed limits on class size, limits on numbers of students which may be assigned to teachers, minimum number of required classroom hours, minimum class sizes, building requirements, curriculum mandates, *ad infinitum*. Due to these restrictions, there is little freedom left to the local school board to improve productivity.

4. Public employee evaluation systems are not based on productivity

In comparison to private sector employees, public employees are less evaluated on factors related to productivity. One reason for this disparity is that government seems less able than private enterprise to define its objectives. Naturally, if there is confusion over the purpose of an agency, there can be little meaningful evaluation of employee performance--since productivity can be measured only in terms of progress toward objectives. As a matter of fact, most public employees are not compensated on the basis of improved productivity, but on job longevity, which may well be irrelevant to productivity.

5. Many public employees have job security

An integral part of improving productivity is the freedom to transfer, reassign, or dismiss incompetent employees. Since large numbers of public employees are protected from dismissal by a variety of laws and regulations, public service is more likely to keep incompetent employees than is the case in private industry, where dismissal based upon incompetency or lack of need is much more common.

6. Public employees have a grass-roots constituency

Firefighters, policemen, and teachers are all our neighbors. As such, they have an opportunity to influence their job welfare in a way that a private employee does not have. Whereas, the private industry employee can do little politically to influence his job welfare, the public employee can appeal to the voters in an attempt to improve his lot.

7. Public employees generally resist attempts to improve productivity

Although many workers in industry understand and support improvements in productivity (more profit often means more pay), public employees often resist such efforts for a number of reasons:

a. What the employee sees as improved productivity is often different from what the employer perceives.

b. Many employees view attempts at improved productivity as greater demands on their own time and energy.

c. Public employees find it harder to see a relationship between their salaries and productivity. They often seem to feel that their salaries should increase even if productivity does not.

d. Unions, and some of their members, seem to see improved productivity as a first step to layoffs. Naturally, layoffs are highly feared by employees in every sector.

8. Public service is a monopoly

Most public service must take place by law. Most public service must take place year after year, despite shortcomings or diminishing needs. No matter how unproductive any public service may become, it is likely to continue. Under such conditions, is it any wonder that productivity is low in government service? In this regard, government is an irony. While on the one hand the federal government tries to destroy any private company that gives even the appearance of a monopoly, the same government operates the nation's largest monopolies. Only a politician can understand such convoluted logic! But even beyond the obstacles to improved productivity inherent in public service, there are a number of common obstacles which can be expected to be encountered in the bargaining process:

a. Absence of credibility. If successful negotiations are to take place, the chief negotiator must establish a personal credibility. In other words, the chief negotiator must be viewed by the opposing team as a person who represents his client with authority and accuracy. Failure to achieve such credibility will inevitably result in unnecessary acrimony, loss of time, and misunderstandings, all of which should be avoided. Credibility can be enhanced in a number of ways:

(1) Credibility can be improved by the demonstration of authority, and authority is best demonstrated by proving that one can deliver exactly what is promised or that one can stop an unacceptable action by the opponent. For example, if the chief negotiator for a government agency may state that he will arrange for some time off with pay for a meeting with certain union members, he must then not only demonstrate his authority in delivering on such a promise, but he must also establish a more friendly relationship while setting the stage for a return, future favor.

(2) Honesty establishes the foundation for credibility. In order to be honest in negotiations, however, one is not required to tell all. In negotiations honesty can be measured by the absence of dishonesty.

(3) When a mistake is made of which the opponent is aware, it should usually be admitted. The unwillingness to admit an obvious mistake can raise serious questions regarding the negotiator's credibility.

b. Bypassing. Since public sector negotiations take place in a political arena, there is more likelihood that the negotiations process may involve others than just the two exclusive spokesmen. For example, negotiations in the public sector have been known to include negotiations between the union president and the city council chairman, or between the chief executive and the shop steward. All such negotiations which might take place outside of that between the two official chief spokesmen should be avoided. Some of the ways that bypassing can be avoided are:

(1) The two spokesmen should try to enter into an understanding that all negotiations will take place exclusively between them.

(2) Each negotiator should educate his own constituents as to the leadership role of the chief negotiator.

(3) Persons who insist on trying to bypass the exclusive spokesmen should be identified and isolated from the negotiations process.

Bypassing is not an experience unknown to the author, and in a few instances he was unable to stop the process. When this occurred, the only avenue left was to inform the opposing negotiator that there would be no concessions made by management, except those actually made at the bargaining table by management's official spokesman. Additionally, the author had to resort to communicating with the president of the union. The following year when negotiations were reopened, the problem no longer existed.

c. Lack of expertise. Every negotiator has a beginning, and at the beginning the negotiator is likely to make some mistakes. The best way to avoid the mistakes of the beginner is to undertake certain preparatory steps:

  (1) Attend as many seminars on negotiations and labor relations as possible.
  (2) Read every book available on the process of negotiations.
  (3) Serve on a negotiations team as a member.
  (4) Undertake some light negotiations whenever the opportunity arises.

d. Time. Time is the fixed funnel through which all human endeavor must pass. Time can neither be lengthened nor shortened. It can be used, however, with varying degrees of efficiency. Time can be a friend or foe. Often when it is your friend, it is the foe of the adversary, and when time is on the side of the adversary, it is likely against you. The point is, an effective negotiator must learn to manage time. Although some general suggestions are found in this book under the section entitled, "How to Manage Time," here are a few specific suggestions:

  (1) Set up a negotiations schedule. This means a beginning for negotiations must be established and an ending date must be set. The schedule must include time for an impasse resolution. process and time for the parties to ratify a proposed

agreement. This schedule, then, becomes the time framework within which negotiations take place.

(2) The length of meetings should be limited generally to about three hours and the meetings should be restricted to the business of negotiations. This does not include frequent and lengthy caucuses, since such breaks are proof that somebody is not prepared.

(3) All meetings should be scheduled in advance. Such a schedule allows for proper planning and preparation.

(4) All necessary homework should be done prior to each meeting. There is no excuse for otherwise.

(5) Each negotiation session should have an agreed-upon agenda. An agenda helps assure that negotiations will stay on the subject and end on target.

(6) The experienced negotiator knows how to delegate the work of negotiations to other team members. Team members can perform research, run errands, prepare documents, make telephone calls, conduct needed interviews, prepare tentative positions, etc.--all of which relieves the chief negotiator from chores which might detract from his main function.

e. Prejudice. The relationship between a labor union and a management team at the bargaining table is adversary. This means that, although the parties may oppose each other's points of view with respect to topics under discussion, it does not necessarily mean that the parties are enemies. After all, the labor contract forms a type of permanent marriage, so animosities should be minimized to every possible extent.

Making the normal adversary relationship more difficult, however, is the preconceived view that the other side is always wrong and your side is always right. This misperception exists on both sides of the table. The union frequently views management as an exploiter of the working man, while management often views the union as the chief threat to its right to manage. Given such prejudices, an air of suspicion sometimes exists at the bargaining table, and can easily lead to misunderstandings, misjudgments, and an unwillingness to take risks.

To overcome such prejudices, both parties must examine objectively their own feelings and attitudes, and make every reasonable effort to follow all of the rules of good faith bargaining. Basically, this means that both parties should sincerely attempt to understand the point of view of the opponent and to seek a voluntary arrangement that is acceptable to both parties.

f. Economic depression. The one obstacle that has influenced collective bargaining in the pubic sector (and the private sector) during the past few years has been the poor economic state of the nation. While America was growing in economic strength and prosperity, there was always something available to give public employees. That all changed, however, by the end of the 1970's decade. With inflation becoming an almost accepted way of life, public employees are fortunate just to maintain their current standard of living.

The 1980s will not produce an economy which provides prosperity for the public sector. The only way that public employees can hope to maintain their established standard of living is to cooperate in finding ways to be more productive. This will mean cutting back on public work forces and producing more from those who remain. It's that simple!

Translated to the bargaining table, this means that management should insist on union cooperation in improving productivity, even at the expense of laying off some public employees. Lest one fear that those laid off will starve, it is unlikely that this will happen, since these people will find employment someplace in the private sector. There is no choice for the union but to cooperate in such attempts to improve productivity. Failure to cooperate will certainly result in a continuing decline in the standard of living for public employees.

g. Bargaining scope. As discussed in the section, "How to Manage the Scope of Negotiations," arguments over the scope of bargaining are inevitable. That section discusses in detail how to minimize problems in this area and how to keep the scope of bargaining reasonably limited to salaries, benefits, and "working conditions."

h. Leaks. The author remembers an occasion where he was authorized by a superintendent of schools to agree to allow the establishment of a sick leave bank. However, before the concession was made as a part of a carefully prepared "package." The superintendent "confided" in a relative, who in turn told the union. Naturally, as a result of the leak, the granting of the sick leave bank did not have the leverage that it otherwise would have carried. Such breaches in confidentiality must not be tolerated. There are a number of methods which can be employed to minimize such unfortunate occurrences:

(1) If leaks come from the governing body, the chief negotiator can receive his instructions by talking individually with members of the governing body.

(2) If leaks come from members of the negotiating team, the negotiator can "plant" a few incorrect pieces of information. Additionally, team members can be reminded of the danger to their job security, if they are found communicating with the opponents.

(3) Of course, the primary means of maintaining confidentiality is to restrict all crucial information to the chief negotiator or only to those with proven trustworthiness.

(4) Once the guilty party has been identified, he should be isolated from all negotiations transactions.

i. Discussion errors. Poor discussion habits at the bargaining table contribute much to the waste of time, as well as creating misunderstandings through superfluous information. By knowing what the chief discussion errors are, the reader should be able to take appropriate action to correct such habits. The chief discussion errors are:

(1) Allowing for interruptions. If negotiations are to proceed smoothly, each negotiator must be allowed to make his point without interruption from his opponent. Although giving such an opportunity to one's opponent may require considerable patience and discipline, in the long run it is the only practice to follow. If constant interruptions go unchecked, they typically escalate into discussion habits which are counterproductive.

(2) Debate rather than discussion. Negotiations is a methodical process of each party presenting an ideal position and then searching for a common ground of agreement. The search for a common ground of agreement consists of exchanging counterproposals which come successively closer to the common ground of agreement. Negotiations is not a debate. Negotiations is not an argument to be "won" by either side. Debate and argument only drive the opponent into a hardened position. And the main skill of negotiations is to entice the adversary party away from a given position.

(3) We-know-it-all. Often the chief negotiator will come to the bargaining table with the view that he knows everything about the items under discussion--including where the parties should settle. This close-minded approach to negotiations makes concessions difficult, especially if the negotiator has convinced himself, as well as his colleagues (and his employer) that he knows all. Negotiations should be entered into with an open mind. Anything less will create unnecessary obstacles.

(4) Ad hominem arguments. Frequently the insecure or inexperienced negotiator will attack his opponent personally, rather than focus on the issue under negotiations. Sometimes this unethical technique is done purposely to undermine the opposing negotiator. Whether the tactic is intentional or unintentional, it should not be allowed to persist. Ad hominem attacks on a fellow professional negotiator can only lead to undesirable results. The best way to handle such misbehavior, if private confrontation does not correct it, is to openly point out each attack which is personal in nature and to show that such arguments will lead to a favorable contract for either party.

(5) Failure to listen. Although negotiations requires considerable creative thinking, no negotiator can do his job if he does not listen carefully to his opponent. After all, if one does not understand the problem, and the suggestions being made to solve the problem, how can a solution be found? One of the best ways to test your listening ability is to repeat in your own words what your adversary has just stated. If you have misunderstood, you will certainly be so informed.

j. Ill-defined priorities. All negotiations have important issues and unimportant issues. The trick is to know your own priorities and, without his knowing it, discover the priorities of the opponent. Failure to identify priorities on either side of the table results in certain impasse. By inadvertently giving away one's chief concessions without a response in kind, issues are left on the table which cannot be traded away. As a result, an impasse exists which will probably be difficult to resolve.

To start with, each party should arrange his list of wants and rejections in priority order. Then, through the process of careful questioning and intelligent listening, the priority list of the opponent should be sought out. The party that can perform this process best is likely to be the "winner" of negotiations.

k. Union political needs. A labor union is a political body in that it must cater to the wishes of the various interests within the union. In large bargaining units, these political interests can be diverse, making concensus very difficult. As a result, although the union leadership may be willing to settle on a contract, a portion of the membership may be so vocal as to make ratification impossible. Therefore, the management negotiator may have to employ supreme skill in constructing a final offer which will satisfy both the political needs of the union and the governing body of the government agency.

In most cases, however, a large diverse bargaining unit can work to the advantage of management, since management can make important concessions which are of value to all members of the bargaining unit--leaving the union to resolve special interest arguments among its members. In such situations, the majority of the union membership usually realizes that if it wants a labor contract on the important issues, it must drop its special interest and minority demands.

2. Diffused governance. One of the chief problems which a management negotiator faces in the public sector is the lack of clear management initiative. Most government agencies are governed by politicians and managed by bureaucrats, a combination which can leave the negotiator in a quandary as to what concessions are authorized. The best way to minimize the problem of diffuse governance is to seize the initiative and show the governing body and the chief executive exactly what must be done to reach an agreement which is good for both management and the union. Such a plan usually means laying out the objectives of negotiations in rather broad terms, leaving the actual negotiations strategy to the chief negotiator.

Such an overall set of objectives which can be laid out for the governing body to approve could be these:

(1) The chief negotiator shall not negotiate the policy-making functions of the governing body, except in the areas of compensation, benefits, and "working conditions."

(2) The chief negotiator shall ensure that a good day's work is given for a good day's pay; that there shall be no decrease in the quality or quantity of work performed by the workforce.

(3) All monetary concessions shall be within prior specified and approved guidelines.

(4) The chief negotiator will not enter into any agreements which removes the right to manage the agency.

(5) The chief negotiator will negotiate a contract which provides labor peace during the life of the contract and gives rise to only reasonable grievances.

(6) The chief negotiator shall make timely reports to the governing body.

The guidelines listed above give the chief negotiator the overall objectives of the agency, but, at the same time, provide considerable flexibility for negotiations.

VI. HOW TO AVOID THE MOST SERIOUS ERRORS

In his book Bargaining Tactics, the author discusses some 300 practical negotiations techniques. A more accurate title for that book might have been "Lessons Learned from 300 Negotiations Errors," for in many instances the bargaining tactics discussed in the book were the direct results of errors made. Every negotiator is going to make mistakes. The important issue, though, is whether the negotiator learns anything from the errors. Listed below are over twenty common and serious errors that negotiators (particularly novice negotiators) make. After reading this list, there should be no excuse for a negotiator to make any of these errors. The author only wishes he had had access to such information before he entered into the collective bargaining field.

1. Absence of a strategy plan

A negotiations strategy is an overall plan to accomplish an objective. All labor negotiations should be preceded by such an overall plan. Just as the union usually has clear objectives it wishes to achieve, and has developed a master plan for achieving those objectives, so should management clearly define its negotiations objectives and develop a strategy for achieving those objectives. This fundamental principle cannot be over-stressed. Failure to have a master strategy plan will inevitably result in wasted effort and deteriorated employee relations.

2. Failure to perform homework

Under normal circumstances, for every hour spent at the bargaining table, at least three hours are spent in related work away from the table. Although the author has known of a few negotiators who were so expert that this general rule does not apply, the rule in negotiations is to do one's homework. There is no single act which will strengthen a negotiator more than the act of preparing thoroughly for each item under negotiations. Knowledge gained through homework is one of the most important sources of power in negotiations. Finding the time to perform extensive homework can be a problem for the negotiator, so it is essential to learn to use time effectively.

3. Large initial offers

Under the "Boulwarism" approach to collective bargaining, management decides in advance what it honestly thinks it can afford to give at the bargaining table and what it thinks is fair to the employees. It then makes those offers without the intermediary steps normally associated with negotiations. Although this approach may sound reasonable from management's point of view, and may even work in some unusual situations, it is not recommended for most labor negotiations. Generally speaking, it is a serious error for the management negotiator to initially make offers which are in reality the "final" offers. Such a practice can be ill-advised, if not dangerous, for a number of reasons.

a. Such a practice may generate an allegation from the union of an unfair labor practice, in that (as alleged by the union) management is bargaining in "bad faith" by refusing to make any compromises. When caught in such a position, management is usually under considerable pressure to make further concessions--concessions which were not planned and likely beyond what management should agree to.

b. A large initial offer by management deprives the union of the needed satisfaction to work for compromises. The union is a political body and can keep its membership only if the membership perceives that the union is seriously working for the benefit of workers. If management makes quick and large initial concessions, such action is likely to appear to the employees that either the union is not working or that there is no need for the union. Neither view will be tolerated by the union.

c. Large initial offers by management may go beyond what would be necessary if negotiations were carried on in the more traditional manner.

4. Dialogue between the union and the agency governing body

As an inexperienced negotiator many years ago, I found myself in a situation where the union was able to communicate during negotiations directly with the chief executive of the agency. Naturally, this arrangement resulted in very unsuccessful negotiations. As a result of these direct communications, my authority as chief negotiator began to crumble, and the chief executive was manipulated into a position which caused some very bad concessions to be made. The general rule that should never be violated is simple: All negotiations should take place exclusively through the designated chief spokesman.

5. Verbal agreements

In the mid-1960s, I was in New York City as an observer of a strike by some 50,000 public school teachers. As the strike became more intense, the mayor became directly involved in the negotiations process, much to the pleasure of the union. Finally, television reported that an agreement had been reached between the union and the mayor. The television news showed the two men shaking hands and stating that they had reached an agreement on all of the remaining critical issues. I remember wondering at the time if the "agreement" was in writing. An hour or so later, the television news interviewed the union leader who described the terms of the agreement. So far, so good. About an hour later, the television news interviewed the mayor, who described his understanding of the terms of the agreement. Naturally, the two men stated different terms, because the agreement was not in writing. Under the psychology of closure, both parties are in desperate need to agree; therefore, the negotiators are likely to hear and see only those things which seem to produce agreement. If all agreements are put in writing, there is far less chance of misunderstanding. In other words, an unwritten agreement is not worth the paper it's not written on!

6. Unauthorized offers

No professional negotiator should ever make an offer which in his best judgment will not be approved by his principals. The negotiator who cannot deliver on the agreements entered into by a handshake is likely to be soon unemployed. For the experienced negotiator, broad authority to negotiate is preferable to narrow authority. However, the danger of broad authority is that the negotiator may agree to a specific item that the approving body will not agree to. On the other hand, the difficulty with narrow authority is that it removes needed flexibility for negotiations. Regardless of the scope of authority given to the negotiator, however, the negotiator must bring back a proposed agreement which, to the negotiator's knowledge, is within the authority granted by the employer. Failure to do so will seriously undermine the negotiator, embarrass the governing body, and dangerously complicate final settlement.

The author recalls one experience in upstate New York, where the governing body authorized a certain percentage increase for employees. An agreement was brought in at that percentage, only to discover that the governing body meant that the percentage increase was to have included the annual (merit) step increase. Needless to say, there were some heated arguments before the misunderstanding was finally worked out. Incidentally, the author was not asked to return to that community for the next year's negotiations.

7. Surprise disputes

One of the main purposes of labor negotiations is to arrive at a written contract governing benefits and working conditions so that there will be no misunderstandings about who is to do what. Therefore, before the final agreement is prepared for printing and presentation to the two approving bodies, there should be a careful "joint" reading of the proposed agreement. The "reading" is a session where the final contract is read in its entirety to be sure that there are no misunderstandings. In one situation when this reading was by-passed, it was not discovered until the final printing that an item had been left out which the union maintained was an item of agreement. Although it will never be known for sure who was right and who was wrong, the misunderstanding did create a serious problem, and it could have been avoided by simply taking the time for a joint reading.

8. Rejection of a reasonable offer

Not all negotiations proposals are rejected for good reason. Some are rejected due to stubbornness, while others may be rejected on a whim. In negotiations, some proposals are rejected because they are included in a negotiations "package" offer. Had the same offer been considered on its own individual merits, it might have been accepted. In some cases, a few proposals are rejected as a form of retaliation. Under ideal circumstances, none of these rejections should take place, but in real life they do. Ideally, all negotiators should be reasonable at all times and should accept all reasonable offers; but, unfortunately, not all negotiations exchanges are reasonable.

The rejection of a reasonable demand usually creates problems at the bargaining table, since the party whose demand is unreasonably rejected develops a feeling of being treated unfairly. Quite likely, these negative feelings will interfere with the progress of negotiations. Furthermore, either party runs the risk of losing a good contract for its refusal to accept a "reasonable" proposal. The author can cite many situations where the employer turned down a reasonable offer by the union, only to accept the same offer later under the threat of a strike or as the result of a strike. In summary, reasonable offers should be taken advantage of, and the parties should move on to reaching a final settlement.

9. Overreacting to stress

The process of negotiations can produce stress among the participants. Some meetings are long, creating a state of fatigue. Some negotiations problems are so complex that there seems to be no solution, creating a sense of frustration. Some sessions include threats, which often create a sense of fear. When concessions are made under stress, the chance for error is increased considerably. The best way to avoid such errors is to minimize stressful situations and to be aware that when you are under stress that you think less clearly than you would under more normal conditions.

There are many ways to avoid and reduce stress. As a matter of fact, most of the suggestions for effective negotiations either directly or indirectly avoid or reduce stress because the suggestions result in skills which help the negotiator control the nature of the negotiations process, and stress is less likely when one is in control of the situation. However, here are some brief suggestions:

a. Keep meetings brief, usually no more than three hours.
b. Have meetings only when real negotiations progress will take place.
c. Prepare carefully for each meeting so that you are the most knowledgeable person present on whatever issues are under consideration.
d. Allow yourself ample time to negotiate.
e. Take a caucus when tensions arise, or recess the meeting until a later date.

10. Agreement based on inaccurate information

As previously stated, knowledge is strength in negotiations. The negotiator who is better informed on all issues than anyone else at the bargaining table has the best chance of being in control of the situation. Failure to be completely informed on all topics can lead to some serious and expensive errors. The most usual area where errors are made is compensation, since a number of factors must be considered in anticipating salaries in the future--such factors as turnover, salary vacancy factors, step increases, salary upgradings, variations in numbers of employees, job reclassifications, etc. Generally speaking, the larger the system, the more difficult to predict with accuracy what the actual cost of a given salary offer will be in eighteen months.

But not all mistakes are measured solely in terms of dollars and cents. For example, in an East Coast school district, a school board negotiator agreed to grant a conference to all teachers who did not receive their requested transfer to another school or to a different assignment within the school. The negotiator agreed to this because of indications that teachers generally were not interested in taking advantage of such a conference opportunity. The concession was made on inaccurate information. Almost all the teachers who did not receive the requested transfer requested a conference. Not only did the conferences take time away from administrators, which they could ill afford to give, but the conferences produced a number of grievances, based upon the information obtained in the conferences. The negotiator later admitted that had accurate information been received, the concession would not have been made.

11. Lying (and worse, getting caught)

The conduct of human relations based upon lies can only lead to mutually destructive relationships. When exchanges between members of society are based upon deceit, all civilized rules fall by the way and man resorts to brute strength in order to get his way. If negotiators cannot trust information given by the other, the entire negotiations process breaks down. For labor and management to reach mutually agreeable solutions under which both can live, there must be an exchange of truth. Facts must be presented so that accommodations can be worked out. The very foundation of negotiations is based upon an assumption that each party is being honest. Lying, then, becomes a quick way to destroy the negotiations process, especially if caught!

12. Improper use of management demands

Prior to mandated collective bargaining in the public sector, governing bodies of public agencies were generally free to determine working conditions and set wages based upon judgments made by the governing bodies. When collective bargaining was introduced into the public services, governing bodies for the first time were required to negotiate before making decisions concerning compensation, benefits, and working conditions of public employees. Consequently, collective bargaining, as perceived by the public employee unions, is basically a one-way process. The union is the moving party, making demands of management, while management generally is in a responding position. Consequently, when management attempts to use the collective bargaining process to make demands of its employees, there is understandable resentment. If such demands are carried very far, the union will very likely respond with effective hostility. That is the main reason that governing bodies should not use the bargaining process to achieve its goals for the use of the workforce. After all, management already has the right to direct the workforce, and one of management's main objectives in negotiations is to retain that right.

But there are other reasons why management should avoid generally the use of management demands:

a. By invoking its own demands, management may inadvertently expand the scope of bargaining beyond that which is required by law or beyond that which is advisable. For example, in a recent negotiations situation, the governing body of a public agency, which had an inexperienced spokesman, decided to demand that employees be evaluated twice each year, rather than the existing annual evaluation. The first consequence of this error was that management introduced a topic beyond the required scope of bargaining, and as a result, made employee evaluation a topic of bargaining forever more. Second, the demand infuriated the union, which led to serious negotiations difficulties. The third consequence leads to the next point.

b. When management introduces its own demands, it may be required to pay for it. In the case referred to above, the union responded that it would agree to bi-annual evaluations, but only if management would change the nature of the evaluation process. At that point, management found itself in the position of having to pay for a right which it had at the outset.

c. The union might accept management's demand. As experienced negotiators are aware, some demands are introduced for "padding" purposes; i.e., to have something to give up in the negotiations process. However, in the rush of negotiations, it is possible that the union might accept the demand before it can be withdrawn. A situation such as this developed in a school district, where the school board introduced a demand that all teachers submit a report of professional books which teachers had read during the year. Before the demand could be withdrawn, the union had agreed to it. Consequently, teachers were required to write reports they resented, and administrators were forced to read reports in which they had no interest, or time, to read. The following year, the school board was in the awkward position of suggesting that such reports would no longer be needed.

13. Disclosing confidential information

Basic to the strategy of all negotiations is not allowing the adversary to know your goals, objectives, strategies, and weak points. For example, if the union knows in advance of negotiations that the employer is willing to go as far as a 10 percent salary increase, the union is certainly going to expect no less than 10 percent. Therefore, management will certainly have to settle for more than 10 percent. In one particularly difficult set of negotiations, when the author was asked by the governing body to "clean up" the labor contract (there was much bad language in the contract), the linchpin of management's team strategy was to finally agree to binding arbitration of grievances, in return for numerous language changes in the contract. The strategy was working fine until about halfway through the negotiations when the union attitude seemed to harden. The reason for the changed attitude soon came to light. A member of the governing body had naively told a union member that the employees should be very happy next year, since their grievances would be settled by an impartial arbitrator!

14. One-on-one negotiations

There is a popular myth that negotiations deals are made privately in back rooms and bars. Although such actions may take place occasionally, they are not the norm, and rightfully so. When the two chief negotiators meet alone confidentially to work out a deal, there are a number of dangers:

a. Since no witnesses or team members are present, there is an increased possibility of misunderstanding as to what was agreed.

b. Union members might find out about the meetings and conclude that their best interests were being sold away.

c. Such meetings deprive the negotiators of valuable assistance from their team members.

15. Reneging

Although all agreements reached during the process of negotiations are tentative pending final approval of the two governing bodies, such agreements are, for all practical purposes, binding on the negotiators--assuming no valid reason to change one's position. Therefore, reneging on tentative agreements is simply not done by experienced and professional negotiators. Reneging destroys trust, undermines the credibility of the negotiator, and makes the negotiations process of questionable value. For example, the author was forced to renege on a promise that accumulated sick leave would appear on employee paychecks. As it turned out, the payroll office could not arrange with data processing to provide such a service. Unfortunately, one of the concessions made by the union was offered under the condition that such information would appear on the paychecks. Understandably, the breaking of this promise created a credibility obstacle in future negotiations.

16. Underestimating seriousness

As stated earlier, the experienced and perceptive negotiator is able to determine what issues are most important to the opposing party. Failure to identify the important issues, and failure to listen carefully to concerns expressed by the union can result in a misjudging of what the union will do. Many years ago when the author represented an employee organization, the governing body decided that all teachers should be required to take a loyalty oath. The governing body was informed that such a demand would never be accepted by the staff, but the governing council seemed not to understand the seriousness of the matter. As a result, the employees held press conferences, letters were written by the dozens, telephone calls were made to the homes of the council members, and demonstrations were held in public places. As a result, the governing body was made to look foolish and it eventually had to back down. The whole affair turned out to be a real loss for management.

Many public employee strikes have been precipitated by the employer's failure to understand the seriousness of the unresolved issues as well as the seriousness of the union's threats to strike. In too many situations, the employer made a concession during the strike which it could have made prior to the strike. Such concessions have a tendency to teach employees that such actions pay off.

17. Dealing with nonnegotiables

Labor negotiations in both the private and public sector generally cover the topics of compensation, benefits, and working conditions as subjects for bargaining. In the private sector, all negotiations fall into one of three categories:

a. The topic is a mandatory topic of bargaining, which means that both parties are required to negotiate on that topic if either party so requests. Salary is the best example of a mandatory topic of bargaining.

b. The topic is a permissive subject for bargaining, which means that although negotiations are not required to take place on that subject, negotiations may take place voluntarily.

c. The topic is a prohibited subject for bargaining, which means that no negotiations may take place on that topic, regardless of the wishes of the parties.

Although these classifications that are used in the private sector do not apply to the public sector, a similar concept exists under many state bargaining laws.

When a topic is prohibited from negotiations in the public sector, or when the employer does not wish to negotiate a permissive topic, certain precautionary procedures should be followed. Discussion on the topic should be narrowly restricted to explaining why the employer refuses to negotiate on the topic. After offering such an explanation, the chief negotiator should clear the record by stating, "We decline to negotiate on this proposal since it is not a required topic of bargaining." Or, "We decline to bargain on this topic because it is a legally prohibited topic."

The following experience should be of interest to the reader. The author was serving as a negotiations consultant to a school district in the Midwest, where the chief negotiator for the school board had little experience in labor relations. As the consultant was not always actually present to guide the management team, much of the consultation took place by telephone. One of the items proposed by the union was to reduce class size. I advised the chief negotiator for the school board that class size was a nonnegotiable topic, in my opinion--which he seemed to understand and accept.

During the last stages of negotiations, only a few items were left on the table, and class size was one of those items. I advised the management negotiator as to some tactics to use to bring final closure, and again admonished him that class size was a nonnegotiable item. A few days later, I received a telephone call from the management negotiator, who informed me with some happiness and pride that he had achieved a very good settlement. I congratulated him and asked why the union gave up its demand for a reduction in class size. He responded that he had made a final salary offer contingent upon the union dropping its class size proposal and the union accepted the offer. I was concerned about the manner by which closure was settled but said nothing, since I did not want to upset his feeling of satisfaction after difficult and protracted negotiations.

The following year when negotiations reopened, the management negotiator called me on the phone late at night to go over some strategy plans, and in the process informed me that the union had again demanded to negotiate on class size. When the management negotiator responded that the issue was dead, since the management had explained its position last year and the union had agreed. "Not so!" said the union chief spokesman. According to the union spokesman, the school board had negotiated class size the previous year when it made a final offer contingent upon the union dropping its class size proposal. In other words, the union claimed that the final offer made by management was actually a negotiations offer which included class size. I informed the management negotiator that I thought the union was probably correct in its assessment, but that management should persist and see what happened.

As it turned out, negotiations ended in an impasse and class size was still on the table as far as the union was concerned. The unresolved issues were reviewed by an impartial factfinder, who inquired carefully into the final offer of the school board the previous year; in which class size was mentioned as a condition. The factfinder's final report stated that class size was a negotiable topic since the school board had actually negotiated on the subject the previous year.

18. Introduction of affordability

To the knowledge of the author, there is no state collective bargaining law which states that the ability of the employer to afford salary increases, is a required topic for negotiations. In order to understand this issue more fully, one needs to look at the way negotiations are conducted in the private sector under the National Labor Relations Act. In the private sector, if a company spokesman at the bargaining table should state that a certain salary demand of the union is unacceptable because the company cannot afford the increase, the company would be required to open its financial books to the union--if such a request should be made. Naturally, this is the last thing that the company would want to do, because disproving affordability is generally an impossible task, since affordability is generally determined by priorities. Although the National Labor Relations Act does not apply to the public sector, the same principle should be applied. The chief negotiator for a public agency should never give as a reason for rejecting a proposal the fact that the employer cannot afford to fund the proposal. As soon as the employer introduces the subject of affordability, it becomes a topic for negotiations. Rest assured, there is no winning an argument over affordability, because the union will always find items in the budget which it claims should be deleted in order to pay for the union proposal.

Naturally, some proposals must be rejected because the employer cannot afford them, but the chief negotiator should find other words to reject the proposal. For example, the negotiator can say, "According to our budget priorities, this proposal cannot be funded." Or, "Considering all of the demands on our budget, we simply cannot accept this proposal." A canny negotiator can find many ways to say, "We can't afford it," without actually saying it.

There are two other ways to deal with affordability without making it a negotiable topic:

a. Information can be released to the press outside of negotiations regarding the plight of the agency's budget, inferentially indicating that lack of funds is responsible for offering less than the union is demanding.

b. If negotiations end in an impasse over wages, and lack of sufficient funds is the underlying reason for not being able to grant the union's request, the governing body can wait for the recommendation of the impasse panel (or fact-finder) and then reject the recommendation (if it's more than can be afforded) by simply stating that the recommendation must be rejected by the governing body because insufficient funds exist. Naturally, this statement takes place after negotiations are over and the time has come for the final decisions on all topics under negotiations. This approach will sometimes cause the union membership to accept the fact that there are not sufficient resources to fund pay for their salary demands.

19. Quotable misstatements

Some union leaders seem to attempt to undermine the credibility of the management negotiator in order to damage his effectiveness. One way to accomplish this is to take statements of the management negotiator out of context and spread them across the front page of the local newspaper. Statements which are innocent and well-intentioned can be twisted to take on a different meaning. The management negotiator should be on guard constantly, especially if the opponent has shown that such unethical tactics are commonly employed.

In a case some time ago, the author was faced with an impasse hearing where it was necessary to present charts and written testimony to the mediator, in order to persuade the mediator to agree to management's position. Part of the presentation mentioned that salaries of public employees and private sector employees were not always comparable, and information was introduced to justify this concept. A few days later, an article appeared in the union newsletter which stated in boldface type that the management negotiator, speaking on behalf of the employer, had stated that the employees in this particular public agency were not as good as similar employees in the private sector. Naturally, the misquotation was deliberate, the purpose being to keep the troops convinced that the employer is at fault and therefore, the union is needed to protect the employees. Although this particular problem eventually resolved itself, the reader should be aware of the lesson taught here and be very careful about making statements which can be easily twisted and used against the speaker.

20. Ad hominem attacks

The process of negotiations is a methodic process of two parties exchanging proposals and counterproposals in an attempt to reach an agreement under which both parties can live. Negotiations is not a skill that just anybody has. It is a complicated skill which deserves the same respect as any sophisticated skill possessed by a competent professional. All labor negotiators should deal with their opposing negotiators with complete respect, until it is proven that the opposition is undeserving of such respect. Therefore, there is no excuse for two professional negotiators to engage in ad hominem attacks. Negotiations should deal with the issues on the table, and not the personalities involved. True, some negotiators will test one's patience, but the best course of action to generally follow, when an opposing negotiator becomes obstreperous, is to remain composed. However, occasionally one will be confronted by an opposing negotiator who simply is beyond redemption, and in such cases there appears to be no consistently successful solution, other than to bear with it and to make the best of the situation.

21. Violating management rights

If a governing body is to carry out the mission assigned to it by the taxpayers, it must have the right to manage--the right to manage programs, the right to manage finances, and the right to manage the workforce. Without these rights, there can be no effective government. The most serious mistake that a negotiator can make is to undermine that right. The author has examined hundreds of labor contracts from all over the United States and Canada, and is constantly amazed by the number of provisions in these contracts which have to some degree weakened the right of management to manage.

The primary function of the management team is to direct the workforce so that the mission of the government agency is accomplished efficiently. This task is difficult enough without the presence of a labor contract which contains various encumbrances on the freedom to manage. Collective bargaining is not a process (from the point of view of management) to determine how the agency shall be managed. The purpose of collective bargaining (again from management's point of view) is to decide through negotiation what shall be the rewards (salary and benefits) given to employees for their performance of the tasks assigned to them. The management negotiator who does not recognize and support the overriding need of management to manage is a negotiator who should change careers. Employees are hired by government agencies to perform needed tasks. The employees are not hired to decide how the agency should be run.

22. Not knowing when to compromise

The heart of negotiations is compromise. The art of negotiations is to know when and how to compromise. The ability to know when and how to compromise is so fundamental to the negotiations process that the absence of the skill renders the negotiator impotent. A prerequisite for compromise is the knowledge of how far one can go on any item under negotiation. If the negotiator knows the settlement point on each issue, he is in a much better position to know when to accept an offer from the union.

23. Can't sell agreement

The negotiator should be clothed in all necessary authority to make offers, to make compromises, and to enter into tentative agreements with the full understanding that such tentative agreements will be approved by the governing body. If the negotiator fails to deliver to the employer a proposed agreement which the employer can confidently accept, a serious error has been made. Either the employer has changed its mind (which is inexcusable), or the negotiator has failed to follow the instructions of his employer (which is also inexcusable). Not only will the failure to sell the agreement to the governing body result in continued negotiations, but it will likely seriously harm the credibility of the chief negotiator, making future negotiations more difficult. The failure to sell the agreement will likely invite the union to try and negotiate directly with the governing body--a bad move in any situation.

Should the governing body reject the recommendation to ratify the proposed labor contract, the negotiator has no choice but to ascertain the exact terms for settlement and take those terms back to the union. When the management negotiator does that, he should be prepared for a long and embarrassing night!

24. Unrealistic quid pro quo

There is a sound rule in negotiations which states, "Never give anything away free." The term quid pro quo means something for something. As applied to negotiations, this rule means that for every concession made by the employer, there must be an equal concession by the union. Although this rule cannot be followed rigidly, since the union is the party which makes most of the demands, the rule is, nevertheless, viable. For example, the granting of binding arbitration of grievances to the union in exchange for the union dropping its proposal for an extra holiday would not be a fair exchange. However, giving employees $50.00 per year to take job-related courses, in lieu of increasing the salary scale by $50.00, might be a very good trade. Knowing what constitutes a good trade in negotiations represents the essence of negotiations. Failure to recognize a good quid pro quo can result in a very one-sided labor contract.

In summary, this section has discussed twenty-four common serious errors made by negotiators. Hopefully, after perusing the suggestions for avoiding these mistakes, the reader will be able to avoid the most common pitfalls in negotiations.

VII. HOW TO MANAGE THE SCOPE OF NEGOTIATIONS

A. The Private Sector

Some twenty years ago, Arthur Goldberg, when he was General Counsel for the steelworkers union, stated:

> The right to direct, where it involves wages, hours or working conditions, is a procedural right. It does not imply some right over and above labor's right. It is a recognition of the fact that somebody must be boss; somebody has to run the plant. People can't be wandering around at loose ends, each deciding what to do next. Management decides what the employee is to do.[1]

Dr. Goldberg's statement is described by a U.S. Department of Labor publication in the following manner:

> The sense of Goldberg's statement that managerial authority to direct the work force does not imply some right over and above labor's right deserves elaboration. It means, first of all, that there are aspects of the management function that are legitimate topics for review by the employee organization. These managerial rights are shared functions which fall within the scope of negotiations, become part of the bargain wrought by the parties. They are matters, bargainable as to substance, such as salary levels, upgrading, transfers, layoff procedures, employee discipline and discharge, etc.
>
> It is, however, the functional role of management, its procedural right to direct the work force, that uniquely characterizes and provides the form of the collective relationship between the parties. We may ask: What precisely is this procedural aspect to which Goldberg refers? Procedural, as distinguished from the term substantive, relates the form or method by which management directs the work force.

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[1] Theodore Kheel, "Strikes and Public Employment," Michigan Law Review 67 (March 1969), quoted in Robert Stutz, "The Resolution of Impasses in the Public Sector," Urban Lawyer 1 (Fall 1969): 322.

> Management does not, in its normal function, deliberate with the union as a de facto partner in the organization to decide jointly how the mission of the organization will be effectuated. The organization is not a debating society, a utopian commonwealth where decision-making is shared on a communal basis. Procedurally, management gives orders and employees are expected to comply with orders, reserving their protests for the grievance procedure after the orders have been carried out. There are, of course, exceptions to this rule as when the employee honestly believes that to carry out the order would endanger his safety, health, or morals.
>
> The key to management's role in the relationship is discerned in the term "administrative initiative." Management initiates the action; it directs the work force. The union, on its part, functions as the advocate of the employees' interest, representing their short-term and their long-range goals. The rights of both parties in the bargaining relationship are of equal stature, but, in Goldberg's words, "To assure order, there is a clear procedural line drawn: The company directs and the union grieves when it objects.[2]

While a long history of collective bargaining in the private sector has made almost all topics negotiable, the same is not true in the public sector for a number of reasons, which will be discussed later in this section.

The scope of bargaining in the private sector finds the origin of its limits in section 8(d) of the National Labor Relations Act, which reads:

> For purposes of this section, to bargain collectively is the performance of the mutual obligations of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution

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[2] "Scope of Bargaining in the Public Sector--Concepts and Problems," Report submitted to Division of Public Employee Labor Relations, Office of Labor Management Relations Services, United States Department of Labor by Paul Prascow and Others, Institute of Industrial Relations, University of California, Los Angeles, California, printed in Public Sector Labor Relations Information Exchange, 1972.

> of a written contract incorporating any agreement, reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. . . .

We have all heard that negotiations must be carried out in "good faith." Although "good faith" is not clearly defined generally in the public sector, the concept is best described for the private sector from the National Labor Relations Board Trial Examiner's ruling on an unfair labor practice charge brought by the International Union of Electrical Workers against the General Electric Company (1963), in which GE was charged with not bargaining in "good faith." The Trial Examiner's report reads:

> Good faith requires the parties to negotiation not only to have sincere desire to reach agreement, but also to make an earnest effort to reach common ground through the processes of collective bargaining. The latter requirement does not mean that an employer must yield his freedom to reject proposals or to refrain from making concessions unacceptable to him. But it does mean, _inter alia_, that the negotiating parties must approach bargaining with a mind accessible to persuasion; that they must follow procedures increasing the prospects of a negotiated settlement; that they must regard all proper issues before them as issues to be resolved through the processes and procedures of collective bargaining; that they must be willing to discuss freely and fully their respective claims and demands, and when these are opposed to justify them on a reason, and that they must be willing at least to consider and explore with an open mind compromise proposals or other possible solutions of their differences in an effort to find a mutually satisfactory basis for agreement.

B. Constraints on Public Bargaining

The Borg-Warner decision of the U.S. Supreme Court (NLRB v. Wooster Division of Borg-Warner Corp.) established three categories for bargaining in the private sector: (1) subjects which are _mandatory_ topics of bargaining, (2) matters which are _permissive_ subjects of bargaining (i.e., by mutual agreement of the parties), and (3) topics which are illegal to bargain over. Although the concept defined by the Borg-Warner case is not legally applicable to the public sector, its concept is found in a number of state bargaining laws. However, the Borg-Warner approach to scope of bargaining in the public sector is influenced by a number of factors, among which are the following.

1. The federal government and many state and local governments deal with public employees according to "merit systems." This means that many of the "working conditions," which might be subjects of bargaining in the private sector, have been preempted by merit ordinances and regulations in the public sector. The conflict between bargaining laws and merit regulations continues to this day to be a source of conflict in numerous governmental agencies.
2. Public sector bargaining must deal with the "sovereignty" issue. Unlike a private company, a government is obligated by law to make laws and regulations to serve the public. Under such an arrangement, the scope of bargaining must be necessarily more limited than that in the private sector.
3. Many of the public employees who come under public sector bargaining laws are "professional" employees, e.g., nurses, teachers, social workers, etc. As "professionals," these people have a special obligation to their clients. As a result, these employees sometimes try to use collective bargaining to take care of the best interests of their clients. This approach to bargaining invariably spells conflict.
4. Special problems of enforcing the funding of labor contracts exist in the public sector. For example, New York's Taylor Law

§ 204-a.1 requires that all contracts include this written provision: "It is agreed by and between the parties that any provision of this agreement requiring legislative action to permit its implementation by amendment of law or by providing additional funds therefore, shall not become effective until the appropriate legislative body has given approval."

The best way to gain insight into the scope of bargaining in the public sector is to look at the laws and agency rulings in three states which have sophisticated bargaining laws and at least ten years experience with collective bargaining. Those states are New York, Michigan, and Pennsylvania. We will also briefly review the scope of bargaining in federal employment.

C. The New York Law

In 1972, the New York State's highest court ruled in the landmark Huntington[1] case that: "The validity of a provision found in a collective agreement negotiated by a public employer turns upon whether it constitutes a term or condition of employment. If it does, then, the public employer must negotiate as to such term or condition and, upon reaching an understanding, must incorporate it into the collective agreement unless some statutory provision circumscribes it power to do. . . ." Under the Taylor Law the obligation to bargain "as to all terms and conditions of employment" is a broad and unqualified one and there is no reason why the mandatory provision of that act should be limited in any way; except in cases where some other applicable statutory provision explicitly and definitely prohibits the public employer from making an agreement as to a particular term or condition of employment.

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[1] Board of Education v. Associated Teachers of Huntington, 30 N.Y. 2d 122, 282 NE 2d 109, 331 N.Y.S. 2d 17 (1972) at 21 and 23.

However, in 1974, the New York Public Employment Relations Board in its West Irondequoit decision, ruled that class size, as such, was not a "term and condition of employment" but a management policy right. PERB did rule, however, that the impact of the school board's decision on class size, as that decision affected the working conditions of teachers, was a mandatory bargaining topic. The PERB ruling was later upheld in the state courts.

D. The Michigan Law

Collective bargaining in the public sector of the State of Michigan follows two basic rules in determining whether or not a topic is within the mandatory scope for bargaining: "1) Is the subject of such vital concern to both labor and management that it is likely to lead to controversy and industrial conflict, and 2) Is collective bargaining appropriate for resolving such issues?" (7 MERC Lab. Op. 313, 1972). This unusual decision seems to imply that any employee union could force bargaining on any topic by threatening to strike. In fact, the labor history of Michigan seems to bear this out.

E. The Pennsylvania Law

In Pennsylvania, the scope of bargaining in the public sector is governed by the following sections from the state's bargaining law:

> Section 701. Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder and the execution of a written

contract incorporating any agreement reached, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

Section 702. Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employee representatives.

Section 703. The parties to the collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of the Commonwealth of Pennsylvania or the provisions of municipal home rule charters.

Section 704. Public employers shall not be required to bargain with units of first level supervisors or their representatives, on matters deemed to be bargainable for other public employees covered by this act.

Section 705. Membership dues deductions and maintenance of membership are proper subjects of bargaining with the proviso that as to the latter, the payment of dues and assessments while members, may be the only requisite employment condition.

Section 706. Nothing contained in this act shall impair the employer's right to hire employees or to discharge employees for just cause consistent with existing legislation.

In the case between the Pa. Labor Relations Board v. State College Area Board of School Directors, the Pennsylvania Supreme Court held that an employer may not refuse to bargain on a topic simply because the topic involves management policies. However, the Court left to the Pa. Labor Relations Board the responsibility for deciding which of the twenty-one items at dispute in 1971 between the teachers and the school board were mandatory subjects of bargaining. Although Pennsylvania's public sector law requires that negotiations take place on "wages, hours, and terms and conditions of employment," that same law eliminates from bargaining "matters of inherent managerial policy," as well as any matter in conflict with law or municipal home rule charters. The Pennsylvania Supreme Court ruled that: "Where an item of dispute is a matter of fundamental concern to the employee's interest in wages, hours, and other terms and conditions of employment, it is not removed as a matter subject to good faith bargaining under Section 701 simply because it may touch upon basic policy.

> It is the duty of the Board (PLRB) in the first instance and the courts thereafter to determine whether the impact of the issue on the interest of the employees in wages, hours, and terms and conditions of employment outweighs its probable effect on the basic policy of the system as a whole. If it is determined that the matter is one of inherent managerial policy but does affect wages, hours, and terms and conditions of employment, the public employer shall be required to meet and discuss such subjects upon request.

The net result of this decision has been that many items of questionable negotiability are reviewed apart and separate from the bargaining table in "meet-and-confer" sessions, where good faith bargaining rules do not apply.

F. The Federal Law

In 1962, President John F. Kennedy signed Executive Order 10988 which mandated collective bargaining in federal employment. In 1970, Executive Order 10988 was replaced by E.O. 11491. In 1980, about 65 percent (1.3 million) of all eligible federal employees were being represented for purposes of collective bargaining in approximately 3,500 bargaining units.

Under E.O. 11491 the scope of bargaining generally covers personnel policies, practices, and matters affecting working conditions to the degree such topics are not in conflict with federal law or government-wide regulations. Under this arrangement wages are excluded from bargaining, since the federal salaries are based on a government-wide wage plan approved by the U.S. Congress. Additionally, the scope of bargaining under E.O. 11491 is further limited by protected management rights. According to E.O. 11491, no agreement shall affect the authority of any management official to:

> (1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
> (2) in accordance with applicable laws:
> (A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
> (B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
> (C) with respect to filling positions, to make selections for appointing from:
> (i) among properly ranked and certified candidates for promotion; or
> (ii) any other appropriate source; and
> (D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

This section of the E.O. 11491, however, does not preclude federal agencies from negotiating the procedures by which such management actions are taken.

In summary, collective bargaining in the public sector encompasses a scope of bargaining which varies from the very narrow to the almost unlimited. Although every state bargaining law, as well as federal E.O. 11491, contains a statement on the scope of bargaining, it should be noted that in many situations, the actual scope of bargaining is controlled by the parties themselves. Whether or not a topic is included in the final labor contract is often less a function of what the law permits (or requires) than a function of power and cooperative relationships between the parties at the bargaining table. In almost all situations, the scope of bargaining is determined by what the parties agree to.

G. Conflict Over Scope

The dispute over what is negotiable seems to be more pronounced among the "professions" such as teaching, nursing, and social work. In these and similar professions, the employees bring to the bargaining table more than just "bread and butter" issues. As professionals, they have a definite ethical and moral commitment to their profession and the persons they serve. Consequently, it is not uncommon for such groups to make proposals which go beyond the scope of bargaining as delineated by the state law or as restricted by other laws and regulations. For example, it is common for teachers to make proposals based on what they perceive to be the best interest of students. A teachers' union will frequently propose smaller classes because they feel such a proposal is good for the students. Similarly, social workers will often demand small case loads, in order to provide better services to those in need of social welfare assistance.

On the other hand, "blue collar" employees are less likely to make such proposals. Such employees do not have the clear professional commitment to serve directly the needs of clients. This is not intended to demean the blue collar workers and their work. They, too, can be "professional," but their occupation often lacks a clear obligation directly to a client.

In the typical dispute between the union and management over the scope of bargaining, the union will maintain that a given topic is negotiable while management will take an opposite position, claiming the item is nonnegotiable. This is understandable. On the one hand, the union wants to bind management on a broad spectrum of matters which deprive management of the power to arbitrarily control the work day of employees, while management, just as committed to its views, strives to retain its managerial freedom to direct the work force without interference by contractual encumbrances. Unlike the private sector, however, where such disputes are resolved through negotiations, the public sector places a number of restraints on the scope of bargaining. These restraints have been discussed earlier.

Despite legal restrictions to the contrary, the scope of bargaining in the public sector is greatly influenced by the strength of the parties. Unless either party refuses to agree, what is negotiable is determined by what the parties negotiate. It is certainly not uncommon for governmental bodies to negotiate on items that are not mandatory. For example, the number of children assigned to a classroom is not a mandatory topic of bargaining in most situations. Nevertheless, class size clauses appear in many public school labor contracts. Frequently, a given "nonnegotiable" item is included or excluded from an agreement, simply on the basis of either party's superior negotiating skill or strength. In short, the relative power of the parties is a very important factor in determining what is negotiable.

The numerous conflicts over the scope of bargaining express themselves in the following areas:

The union will normally interpret "working conditions" very broadly, while management will have a tendency to take a more narrow interpretation. Often the union spokesman (especially for professional employees) will maintain that anything that affects the members' working conditions is negotiable. The management spokesman often rejects such a rationale and seeks some argument, such as sovereignty, to support management's case. The union will frequently seek to negotiate definite restrictions on management's freedom to direct the workforce. Management, taking a different point of view, will claim that negotiations should be restricted to the compensation and benefits to be paid to employees for performing the work assigned to them by management.

Typically, the union will seek to negotiate a "past-practice" clause or a "maintenance-of-standards" clause. Such clauses attempt to incorporate into the written agreement a host of unspecified benefits and past practices. Management's frequent response to such proposals is a strong demand for a "management rights" clause. In brief, such a clause states that unless specifically agreed otherwise in the agreement, the agency is free to conduct affairs as it sees fit.

Frequently, unions which represent nurses, teachers, social workers, and similar professions, will make proposals designed to improve the welfare of the persons being served by the profession. Since such proposals are usually made in good faith, it is difficult for the professional employee to understand why such proposals are sometimes viewed by management as "nonnegotiable." Such rejections are often received as affronts to the profession, thus endangering a friendly and cooperative attitude between the negotiating parties.

Sometimes management will attempt to bypass the union by establishing various employee relations committees. Often such arrangements are designed to minimize the number of complaints and proposals which must be dealt with at the bargaining table. A union will frequently try to counter this tactic by negotiating language which requires that the union be directly involved in such arrangements. When this action is taken by the union, management will often counter with language that the labor contract shall not be interpreted to prohibit management from having such arrangements with its employees.

Occasionally management will try to trade off a union proposal which management considers nonnegotiable. This tactic sometimes works, but it can backfire. Management claims an item is nonnegotiable, but then proceeds to use the process of negotiations to eliminate the proposal! An alert union negotiator can turn this tactic to his advantage.

Both management and the union should keep themselves informed on what is negotiable. This can be done by:

1. Becoming familiar with what other jurisdictions have negotiated.
2. Keeping abreast of applicable court decisions and state board rulings.
3. Studying arbitration texts.
4. Becoming familiar with those areas in which the other laws have preempted negotiations.

Although labor contracts frequently go beyond the scope of topics required for bargaining in the state law, there is a broad group of topics normally not required in negotiations. These topics include:

1. Nonnegotiable topics

In order to help the reader better understand what is negotiable, some topics have been listed below, which in the judgment of the author, are not required subjects of bargaining in a public school district; except as they may impact (in some states) upon the wages, hours, and working conditions of those in the bargaining unit. Naturally, the list is only a small sampling, in that a complete list would be impossible.

a. Graduation requirements of students

b. Discipline code for students

c. The establishment of performance standards

d. The determination of evaluation criteria and the application thereof

e. The school calendar

f. Contracting out

g. Certification requirements

h. Establishment of promotional criteria and the application thereof

i. The creation of new and added position

j. The operation of the school bus program

k. The grading system for students

ℓ. The establishment of the school curriculum

m. The design, location, and construction of schools

n. The conduct of school board meeting

o. The purchase and use of technological equipment

p. The overall selection of employees

Although the list presented above applies to a public school district, a similar list of nonnegotiable items can be prepared for any public sector jurisdiction.

As stated previously, what is negotiable is determined finally by what the parties agree to. Under that concept, any of the above topics could be negotiated. Furthermore, keep in mind that several states would require that negotiations take place on the above topics to the extent that such inherent managerial rights impact on wages, hours, and terms and conditions of employment.

H. Tips for Limiting Scope

A management negotiator can limit the scope of bargaining by following the ensuing rules:

1. Incorporate a strong management rights clause into the labor contract. Such a clause will be a constant reminder to the union that it is the governing body that must finally run the agency. Furthermore, a strong management rights clause will be of inestimable help in the final determination of grievances, since many grievances are a test of the school board's final authority to manage the affairs of the district.
2. Include a good grievance procedure in the labor contract. Although this article cannot explore the ingredients of a "good grievance procedure," the most important ingredient is the definition of a grievance. Grievances should be limited to allegations that there has been a violation of the specific terms of the labor contract. Such definition limits the union's ability to deal in areas which are reserved to management, assuming the labor contract has been similarly limited to wages, hours, and terms and conditions of employment.
3. Establish channels of communications where nonnegotiable topics can be discussed. This will give the union a chance to express itself regularly, but will not require that the management negotiate on such items. This is a good trade off, considering the likely alternatives, i.e., labor strife.

4. By-pass the union and involve employees in matters of their job interest. This will not only give the governing body some good advice, but it will enhance the loyalty of employees to their employer and undermine the union's control over the employees.
5. Set up joint committees where appropriate. Such committees, if properly established and operated, can keep the union out of nonbargainable areas.
6. Do not put a "past-practice" clause into the labor contract. Such a clause binds the jurisdiction to unknown subjects, some of which may be nonbargainable. The same advice applies to the "maintenance of standards" clause.
7. Be very careful in using quid pro quo to rid the table of nonbargainables. If the management negotiator is not careful, such a practice can be interpreted to be willingness to bargain.
8. Restrict the labor contract to matters which affect only those in the bargaining unit being negotiated with. For example, don't put in a teachers' labor contract a clause which describes how custodians will clean the teacher's room, especially if the custodians are organized and represented in a separate bargaining unit.
9. Cooperate with other jurisdictions on holding the line on nonbargainable topics. This can be done by establishing a consortium and holding regular meetings, at which certain "understandings" are entered into.
10. Do not negotiate administrative procedures to be used in implementing a term of the labor contract. Such matters should be under the purview of management.

11. Keep abreast of all rulings handed down by the state agency which oversees the state's bargaining law. Similarly, keep appraised of all state court rulings which pertain to the scope of bargaining.
12. Although fact-finding recommendations and grievance arbitration decisions are not binding on other public agencies, such findings should be reviewed as they come out. Rest assured, the union is also reviewing them.
13. Become thoroughly familiar with topics which have been preempted from bargaining, e.g., employee certification, construction of buildings, agency organization, performance standards, etc. Once you are familiar with the many automatic exemptions for bargaining, you'll be surprised how often such knowledge helps you avoid unnecessary bargaining.
14. Be very careful in making an initial "board demand." Sometimes the uninitiated negotiator may introduce unwittingly topics which should not be bargained.
15. Do not enter into verbal agreements on nonbargainable topics. Such verbal agreements might be determined to be negotiated agreements.
16. Finally, an effective management negotiator controls the emotional tone at the bargaining table. Although this section cannot elaborate in detail how this is done, suffice to say that the negotiator should take any reasonable action which indicates a sincere interest in the problems brought to the bargaining table.

I. A Final Word of Caution

As stated at the outset of this section, topics can be generally placed in one of three categories for purposes of negotiations, i.e., mandatory, permissive, and illegal. If a topic is mandatory (that is, required by law), there is very little that can be done about the topic being negotiated. If the topic is permissive, it can be negotiated only if management voluntarily agrees to do so. If management agrees to negotiate on a nonmandatory (but not illegal) topic, then management should exact a trade off from the union. If the topic is an illegal topic for bargaining, then very little needs to be said; except that the union is likely to try to persist anyway by employing various techniques to obtain a concession from management.

If, in the final analysis, management wants to refuse to bargain on a topic, there should be no negotiations on that topic--and very little discussion. The only discussion that should take place should be a brief explanation of why the topic is not a mandatory topic of bargaining and why management refuses to bargain on the matter. Beyond that, hold your discussion for the mediator, or the judge!

J. A Special Note About "Working Conditions"

In its simplest concept, collective bargaining is designed to attempt to determine the wages and benefits that employees are to receive in return for the time, energy, and skill which they give to the employer. In other words, in return for doing the work assigned to them by management, certain wages and benefits are agreed upon through the process of negotiations.

Under this concept one may reasonably ask, "Why are *working conditions* negotiable?" As stated above, wages and certain benefits are agreed upon at the bargaining table in return for the employees performing tasks assigned to them by the employer. However, unless the employees have some idea of the tasks which will be assigned to them and some idea of the *conditions* under which these tasks shall be performed, it is difficult for employees to know what are acceptable benefits and wages.

For example, how could a group of custodians agree to salary and benefits if there is no agreement on the number of hours to be worked for the salary and benefits? If a custodian is offered $300.00 per week, shouldn't the custodian know how many hours must be worked for this salary? This example shows how the "conditions" of the job (that is, hours of work) can influence the employee's attitude toward wages and benefits. Therefore, before a union will agree to wages and benefits, the union can be expected to want an answer to the question: "What are the working conditions of the job?"

As discussed elsewhere in this section, not everything the union so labels is necessarily a "working condition." In the public sector there are many state laws and civil service regulations which specify certain working conditions. Furthermore, in the public sector, many state laws clearly specify certain "management rights," thereby prohibiting negotiations on topics which might be negotiable "working conditions" in the private sector. For example, in private schools, class size is a negotiable topic; whereas, under New York's public sector labor law (by way of one example), class size is not a mandatory topic of bargaining.

VIII. HOW TO RETAIN THE RIGHT TO MANAGE

The main function of management is to manage. The main function of workers is to work. And never should the two be confused. The function of the supervisor is to supervise and to ensure that others do their work. The function of collective bargaining is not to determine how managers shall manage or how supervisors shall supervise. The function of collective bargaining is to determine through negotiations what shall be the rewards and benefits for employees who perform work assigned to them and under what "working conditions" those task assignments shall be performed. Therefore, the labor contract should not contain provisions which deprive management of the right to manage the agency.

Naturally, some unions, particularly those which represent "professional" employees, such as teachers and nurses, have a real desire to participate in management functions. Frequently such unions seek such management involvement through the labor relations process. Such attempts should be resisted. If the employees wish to involve themselves in policy development and policy implementation, and if management agrees to such involvement, a procedure separate from collective bargaining should be established.

The right to manage means that the management of a public agency must remain unencumbered and discretionary in numerous areas, such as the right to:

1. Discipline employees

The control of any workforce involves, among other methods, the wise use of rewards and punishment. If employees do well, they should be rewarded. Similarly, if an employee makes a serious error, particularly one that is intentional or negligent, that employee should be disciplined in an appropriate manner. Discipline actions can include loss of pay, imposition of fines, forced leave, reassignment, or letters of reprimand.

2. Discharge employee

In order to achieve its objectives, a public agency must have the freedom (as long as exercised in a legal and nonarbitrary manner) to employ the best qualified persons and dismiss those who do not function satisfactorily. The loss of the right to fire personnel for good cause probably is the most serious loss an employer can experience.

3. Transfer employees

In order to place employees where they are needed and can perform best, management must have the freedom to transfer employees. If employees are allowed to stay in positions where they are not functioning satisfactorily, then the overall efficiency of the agency is impaired.

4. Promote employees

Promotion is an important part of the personnel function of any agency, and any interference which impairs the promotion of the best qualified person can have long-lasting negative results. Promotion is just another form of transfer action, an attempt to get the right person in the right job.

5. Hire employees

All the work of any public agency takes place through people. In order to accomplish the work of the agency, the agency heads must have the right to choose those persons who will perform best in the available positions. Allowing a union to choose employees, or influence their choice, would inevitably result in inferior workers being chosen.

6. Assign overtime

Few places of work can be run so orderly that all work takes place at all times during the regular work day. Even in the best of managed agencies, emergencies occur which make it impossible to accomplish the required work within normal working hours. In some agencies, if management could not freely assign overtime, the work would never be finished. While just how much an employee is to be paid for required overtime is a negotiable topic, but the assignment of overtime is not negotiable in most situations.

7. Schedule operations

Obviously, management should retain as much control as possible over the planning and scheduling of operations. Many contracts are silent on scheduling (unless it is covered in a management rights clause), the employer considering it his exclusive right. But if the subject should arise at the bargaining table, a simple, but broad, clause can remove any doubt. For example, the following clause would suffice: "The planning and scheduling of production shall be the exclusive function of management."

8. Control production standards

Normally, management retains the right to control production standards without any question. However, in public agencies where there are assembly line type operations (sanitation departments, government printing offices, etc.), the union may challenge changes in production standards because of the direct impact on working conditions in relation to compensation. Should the issue arise, the following contract provision should do well for management: "The right of the agency to establish and determine and to maintain and enforce standards of production is fully recognized."

9. Evaluate employees

The evaluation of employees serves a variety of functions, such as identification of strengths and weaknesses, identification of those eligible for promotion, or determination of compensation. All aspects of employee evaluation, if handled properly, result in a more efficient operation. Should the union be allowed to interfere with the objective evaluation of employees, management loses a vital source of power in the management of the workforce.

10. Make technological changes

Increasingly, technology in all forms is a requirement for the efficient operation of government. Unless government is left free to employ technology when it is more efficient than manpower, the effectiveness of public service is thereby limited. Frequently, unions will resist any technological change which threatens the job security of unit members, or threatens to make unit members work harder. Although management should be willing to discuss changes in technology with the union there should be no negotiations on the introduction of new technology at the work site.

11. Subcontract

An employer usually has the right to subcontract (or contract out) work in the absence of a specific contract provision for bidding such action. But if the union insists on a "no-subcontracting" clause, management should try to avoid an outright prohibition. The union is primarily interested in the job security of its members. Usually a promise that no layoffs will result from subcontracting is sufficient to satisfy the union.

12. Suspend employees

An important part of any personnel discipline policy is the right to suspend employees for good cause. Suspension is not only a form of punishment which should discourage employees from repeated mistakes, but it is a way of temporarily removing an employee from a situation until a problem is resolved. Loss of the right to suspend employees is the same as forcing an employer to pay a person who is not entitled to be paid.

13. Schedule leaves

Employees are hired to perform specific jobs and should be required to be present when needed. This is not to suggest that employees should be denied access to leave when needed and when wanted, if the employer can make appropriate arrangements. The point is that the employer must retain the right to decide when employees will be released from the job for leaves other than sick leave and similar emergency leave. To allow employees to take leave at their discretion would be irresponsible on the part of management.

14. Punish illegal strikers

Although there is no carte blanche right to strike in the public sector, there have been hundreds of strikes in the public sector since the introduction of collective bargaining in the mid-1960s. Almost all of these strikes have been illegal, and in most cases they were carried out absent any serious punishment to the perpetrators. Since there is no clear legal right to strike in the public sector, any labor contract that would allow such action would likely be an illegal contract. Should an illegal strike take place, management should take all appropriate steps to terminate the strike without concessions and to discipline its participants.

15. Require obedience to work rules

Although it's not necessary to put such a provision in the labor contract, a public employer has the right to expect that all employees will obey the policies, regulations, and directives of the agency, unless such provisions are illegal--contrary to the labor contract--or a threat to health and safety. In such a case, the grievance machinery should be used to contest the order. Normally, the work rules of an agency should be left out of the labor contract and placed unilaterally in the agency's regulations and handbooks. Once negotiations begin to take place on day-to-day work rules, there is no end to negotiations, and management can only have its right to manage eroded.

16. Award merit wage increases

Although many public agencies do not have wage increased based solely upon meritorious performance, a number of government agencies do have merit "step" increases, which are granted based upon meritorious or satisfactory service. Whatever the case may be, an employer should retain its right to give merit pay increases for meritorious performance.

In 1948, the U.S. Supreme Court approved the rule that an employer in the private sector is obliged to bargain on the subject of merit wage increases to employees. Although this rule is not applicable to the public sector generally, there are a number of states where management's desire to use merit pay could be a mandatory topic of bargaining. This does not mean, however, that management must give up all rights on the subject. But it does mean that the agency negotiators upon demand from the union must sit down and discuss the matter. Unions generally do not like merit pay. Frequently, the union's position will be that pay increases should be automatic based upon seniority.

17. Assign production work to foremen

In many work places it is impossible to restrict a foreman from all forms of work normally performed by those under his supervision. Understandably, many unions do not want foremen to perform work normally assigned to unit members. In the absence of a contract clause to the contrary, most employers feel that foremen can do a certain amount of production work in addition to their supervisory functions.

18. Reduce the workforce

As government agencies change and as the economy declines, the right to lay off employees is an imperative right. The only way that government agencies in the 1980s will be able to stay within their budgets will be to lay off employees. Anything less would result in the taxpayer being forced to support another unnecessary person. Although a public agency should be willing to discuss the procedure (e.g., the role of seniority in layoff), the employer should not negotiate away the initial right to reduce the size of the workforce for cause.

A. Some Threats to Management Rights

The author has examined hundreds of labor contracts, and although many of them contain clauses which unreasonably restrict the right of the governing body to manage the agency, most of the contracts deal primarily with wages, benefits, and "working conditions." Although there can be no complete list of the clauses which erode the right to manage, here are some which should be avoided:

1. "Just cause"

The phrase "just cause" is found too frequently in provisions governing all types of personnel action from assignment to dismissal. The danger in using such a phrase is that "just cause" has no clear definition, and if the labor contract has binding arbitration as the last step in the grievance procedure, then an arbitrator will decide what the term means--and the arbitrator's decision may be quite different from what management had intended.

For example, let's suppose that a labor contract has the following clause in it: "No employee will be disciplined without just cause."

Unless the underscored phrase is defined elsewhere in the labor contract, any other definition would be ambiguous. What is "just cause" to the employer will certainly not be "just cause" to the employee. Incidentally, the sample clause above has no definition for the term "disciplined" either. The best rule to follow is to spell out the meaning of "just cause."

2. Criteria for employee evaluation

As stated previously in this section, the evaluation of employees is a management right. This is not to say that no aspect of employee evaluation is negotiable. Normally, some parts of employee evaluation are negotiable; such as the right to see the evaluation form, the privilege to discuss one's evaluation, etc. However, the determination of the criteria upon which an employee is to be evaluated and right to measure performance on that criteria are rights that are indispensable to management.

3. Maintenance of standards

A number of labor contracts have provisions in which management promises not to "diminish any benefits heretofore enjoyed by employees." Such a clause, sometimes referred to as a "maintenance of standards" clause, is a provision which has no clear definition. It imposes an unnecessary restraint on management and presents an open invitation to employees to grieve any action of management which changes an existing "benefit."

"Past practice" clauses are just as dangerous, in that such a clause promises the employees that management will continue to adhere to all "past practices" not addressed in the labor contract. Obviously, such a clause commits management to future unknown practices and is also an open invitation for grievances. Although the union will have several well contrived arguments for such clauses, they should be rejected at all costs.

4. Staffing guarantees

A disappointing number of labor contracts in the public sector, particularly those in public education, have provisions which guarantee that a given number (or proportion) of employees will be retained on the agency payroll. Although such a protection might appear to be advantageous to the union on the surface, the likelihood is that such a provision in time of economic depression (or high inflation) will result in salaries being lower than would have otherwise been the case. Obviously, if the employer is forced to keep persons on the payroll beyond what is affordable, their pay will come out of that due to other employees. On the other hand, if the employer were permitted to reasonably lay off employees, the money saved by such layoffs could be transferred to those who remain.

5. Job descriptions

Most public employees should be employed in positions for which there are written job descriptions, and hopefully that job description is properly constructed and includes a provision for "other duties as assigned." These job descriptions should be unilaterally developed by management--and should not be a part of the labor contract--but should be distributed through the agency's normal channels of personnel communications. Once job descriptions become a topic of negotiations, or are incorporated into the labor contract by reference, there will be no limit to negotiating the actual work of employees. Such a restriction effectively destroys management's freedom to assign tasks as needed in order to carry out the legitimate services of the agency.

6. Job classifications

If management is to put employees into the correct job and assign the correct salary to that job, then there must be some form of job classification. The determination of what jobs are the most important, and thus deserving of the highest pay, and the jobs that are least important, and thus deserving of the lowest pay, is a responsibility of management. How much salary is paid to the persons in those jobs, once the jobs have been classified, is a negotiable topic. Some governmental agencies have made the serious error of incorporating the classification system into the labor contract by inference. Naturally, once the system is in the contract, it is there permanently.

7. The agency budget

All state collective bargaining laws make wages a mandatory topic of bargaining. (The federal Executive Order No. 11491 does not allow bargaining on wages, however, wages being set by the U.S. Congress.) There is no state bargaining law, however, which specifically states that the budget of the public agency is a mandatory topic of bargaining. Unfortunately, however, some jurisdictions seem to believe, at least according to their labor contracts, that they have some obligations to negotiate various aspects of the agency budget. Agreeing to give employees a 10 percent salary increase is one thing; agreeing that the salary portion of the agency budget shall be $1 million is quite a different matter.

B. Should You Have a Management Rights Clause?

The issue of whether or not a labor contract in the public sector should contain a management rights clause is very controversial. According to some experts, there is no need for such a clause because governments are sovereign, and as such do not need a management rights clause to retain the right to govern (manage). Comparable experts maintain the reverse; however, that is that such a clause is needed to make it clear that the governmental agency shall rule as it sees fit, unless specifically prohibited by a specific provision of the labor contract. Among these latter experts the only question is whether the management rights clause should be long or short, broad or narrow.

For example, a short management rights clause could read: "The governing body shall retain all rights to manage unless otherwise provided for by the terms of this agreement." On the other hand, a long and comprehensive management rights clause (for a school district) could read:

> The school board, on its own behalf and on behalf of the electors of the district, hereby retains and reserves unto itself, without limitation, all powers, rights authority, duties, and responsibilities conferred upon and vested in it by the laws and Constitution of the State and the United States, including but without limiting the generality of the foregoing, the right:
>
> 1. To the executive management and administrative control of the school district and its properties and facilities;
>
> 2. To hire all employees and, subject to the provisions of law, to determine their qualifications, and the conditions for their continued employment, or their dismissal or demotion; and to promote, and transfer all such employees;
>
> 3. To establish grades and courses of instruction, including special programs, and to provide for athletic, recreational and social events for students, all as deemed necessary or advisable by the Board;

4. To decide upon the means and methods of instruction, the selection of textbooks and other teaching aids of every kind and nature;

5. To determine class schedules, school hours, and the duties and responsibilities and assignments of teachers and other employees with respect thereto, and non-teaching activities.

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the Board, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgement and discretion in connection therewith shall be limited only by the express and specific terms of this agreement and then only to the extent such specific and express terms hereof are in conformance with the Constitution and laws of the United States.

Nothing contained herein shall be considered to deny or restrict the Board of its rights, responsibilities, and authority under the state school laws or any other national, state, county, district or local laws or regulations as they pertain to education.

C. Conclusion

In summary, the single most important function of the management negotiator is to protect the right of the governing body to govern, and the right of the management and the supervisory staff to manage. Failure to protect this vital right results in an erosion of management efficiency, and ultimately works to the disadvantage of the employees themselves. Therefore, it is of paramount importance that the competent negotiator take steps to protect this management right.

IX. HOW TO EVALUATE DEMANDS

An important step in preparing responses to union demands is the evaluation of those demands. But just exactly how are demands evaluated? Some negotiators seem to assess bargaining demands instinctively; while others appear unable to grasp the true significance of negotiations proposals. Personally, I never gave the question much thought until very late one night in a motel room I asked myself the questions: "What are the relevant factors to consider in the evaluation of negotiations proposals?" I reviewed carefully a number of lists of union demands from various bargaining situations and noted under each demand all of the factors I had considered before arriving at a position on each individual demand.

After several hours of work, I discovered that there are only about ten relevant factors to consider in evaluating demands in labor negotiations. If these ten factors are applied to each demand a negotiator will seldom make a serious mistake in his responses. The relevant factors which should be considered in the evaluation of all demands are:

1. What effect does the demand have on the employees?

By understanding what impact a proposal would have on the employees the management negotiator is in a strengthened position to decide how to handle the proposal. For example, a proposal that would materially reduce the amount of work performed by employees should be rejected.

However, a proposal which produces more work from employees should be looked at with interest.

Union demands, if accepted by management, can have various and sometimes surprising effects on employees:

a. A union demand which treats some members better than others can divide the union membership; and while a divided union membership might be to the advantage of management, it might also be to the disadvantage of management. For example, a union demand which gives special salary increases to the union leaders might alienate the general membership from the union leadership and make ratification of the contract impossible. On the other hand, if the union leadership views the proposed contract as a good one, there is greater chance that the contract will be ratified.

b. A union demand which is highly popular among a majority of the union members can coalesce the membership into an acceptance of a contract which might be very favorable to management. On the other hand, refusal of management to accept such a proposal might also drive the union on to the picket lines.

2. What is the legal effect of a union demand?

Occasionally, a union demand will call for a concession which would be illegal if accepted. A demand by a teachers' union that classroom teachers be given the final authority to expel students from their classes would be illegal. Or, a union demand for a closed shop would also be illegal. All such illegal demands must be rejected, but with one special caveat. If a demand is to be rejected because it is illegal, the rejection should be accompanied by at least one other reason for rejection; otherwise, if the allegation that the proposal is illegal turns out to be incorrect, there is no other reason left to fall back on to reject the proposal.

3. Is the demand negotiable?

All negotiations proposals in the private and public sector fall into one of three categories:

a. The demand is a mandatory topic for bargaining, i.e., negotiations are required by law. Wages are the best example of a mandatory topic of bargaining (except in the federal sector, where wages are unilaterally set by the U.S. Congress).

b. The demand is a permissive topic of bargaining, which means that the topic is bargainable by mutual agreement of the parties. The evaluation of employees is a good example of a permissive topic of negotiations, in that it is neither a required topic of bargaining, nor is it a prohibited topic of bargaining. It is a topic (in most instances) which may be bargained by mutual agreement of the parties.

c. The demand is a prohibited topic of bargaining, which means that all negotiations on the subject are prohibited by law. A good example in the public sector would be a proposal to allow for strikes. Negotiations on that topic would be prohibited in all states and the federal government.

A word of caution is in order, however. Negotiability is less a factor of law than of what the parties actually agree to. Generally speaking, anything the parties negotiate on becomes a negotiable topic, regardless of what the law may say.

4. What are the monetary costs of the demand?

No union demand can be granted without some type of monetary cost. Nothing is free of some form of cost. Either the proposal has a direct cost, or it has an indirect cost. Either the proposal has an immediate cost, or it has a long-range cost. Either the proposal has an obvious cost, or it has a hidden cost.

By understanding fully the monetary and nonmonetary cost of each union demand, management can compute the total true cost of the union contract proposal. Then management can compare this total cost with what it is willing and able to afford and begin to establish priorities, which in turn assist in identifying which proposals must be rejected and which can be accepted. Although the union will invariably insist that the costs estimated by management are high, the costs computed by the union are invariably lower than the true costs. For those who wish to learn more about how to cost a union contract proposal, read the section on costing proposals in the author's book, Bargaining Tactics.

5. What is the effect of the demand on the client?

Most government agencies provide rather specific services to specific populations. For example, the public schools provide education to persons generally between the ages of five and eighteen. Public hospitals provide services to sick people. Welfare agencies provide services to poor people. The sanitation department collects trash from homeowners, and so on. In most cases of public service there is a clientele involved to whom the government service is directed.

Since government is created to serve the citizens, management should always consider the impact of the union proposal on the people for whom the government agency is designed to serve. For example, a proposal by a policemen's union to restrict the work of policemen to the hours of 9:00 A.M. to 5:00 P.M. would be a drastic and dangerous disservice to the people whom the police are pledged to protect. Of course, such a ridiculous proposal would be rejected without hesitation.

A union proposal which has a positive impact on services to the citizens being served should be examined carefully, and if the right conditions can be met, the proposal likely should be approved. However, a proposal which hinders service to citizens should in most cases be rejected.

Some public employees have a direct client relationship which can complicate the bargaining relationship between the union and the governing body of the government agency. For example, teachers will often make demands designed to improve education for children. Similarly, nurses will often make demands at the bargaining table designed to improve the welfare of patients. But, students are not in the bargaining unit represented by the teachers' union, just as patients are not in the bargaining unit represented by the nurses' union. Therefore, proposals designed to improve the lot of the client being served should be rejected in most cases. Naturally, professional employees are concerned with the welfare of their clients, as is management, but that concern is not solved at the bargaining table. Those concerns are solved each day on the job.

6. What is the impact on the employer's authority?

Some unions, particularly those which represent "professional" workers, such as teachers and social workers, often make demands on issues beyond "bread and butter" interests. As explained earlier, this is done for two reasons:

a. Professional employees feel that they should participate in management decisions, and

b. Professional employees often have a direct client interest and view the bargaining process as a means to make policy decisions which assist the client.

This phenomenon is not necessarily restricted to "professional" workers, however. It is common practice for many unions, regardless of whom they represent, to make proposals which deal with management functions. Such proposals, if granted by management, can restrict management's freedom to direct the workforce. The less freedom management has to direct the workforce, the more opportunity for employees to do as they wish and the more opportunity for the union to give direction to the workforce. Any loss of management rights is almost always a gain for the union and its members.

Therefore, as discussed in the chapter dealing with management rights, any attempt by the union to lessen the right of the governing body to govern and the executives to supervise should be resisted actively. The labor contract should leave the governing body free to adopt any reasonable policy needed to carry out the functions of the government agency. This admonition, however, should not be interpreted to mean that any agency can violate its labor contract with the employees all in the name of serving the public. A labor contract prevails and cannot be violated no matter how sincere the governing body or how urgent the need for change in some agency policy.

Any union proposal which would mean any significant diminution in management rights similarly should be resisted aggressively. The function of the administrative staff of any government agency is to oversee the workforce and give needed directions. Any interference with that function can result in a deterioration of the overall efficiency of the agency. Any proposal which limits management's power to assign employees, transfer employees, dismiss employees, determine performance standards, schedule work, etc. should be rejected. As stated previously, the function of supervisors is to supervise, the function of the workers is to work. The function of the union is to negotiate the rewards that will be given to the workers for doing the work assigned to them by management.

7. What is the effect of the demand on other bargaining units?

A bargaining unit is a group of employees to whom the labor contract applies. A bargaining unit is usually composed of employees who have certain common attributes. For example, a teacher's union usually represents only teachers and related personnel. Employees find themselves in different units from other employees because of some significant difference between the groups of employees. For example, although policemen and firemen may have the same employer, they practically are never in the same bargaining unit, because they have little in common to bargain over.

Despite the fact, however, that different units contain types of employees, no experienced negotiator would enter into negotiations with one bargaining unit without regard for all other bargaining units in the agency. The dangers in negotiating with one bargaining unit without regard for others are as follows:

a. An agreement with one bargaining unit may be a disagreement with another bargaining unit. For example, an agreement with a teachers' union to have classrooms cleaned every day only after school hours could be a violation of the labor contract with the custodians. A demand by city warehousemen that truck drivers unload their own trucks could be a violation of the contract with truck drivers. Fortunately, when such conflicts are discovered in union demands, the union often will modify its demands in order to protect the rights of brotherhood members.

b. An agreement with one bargaining unit may be a precedent for all others. For example, an agreement with municipal machinists to increase the city's contribution to payment of health insurance premiums would likely precipitate a similar demand by all other bargaining units, since hospitalization is one of several benefits which are usually applied equally across all bargaining units.

c. Generous concessions to one bargaining unit might drive nonunion employees into a union in order to obtain similar advantages. Whenever within the same employment agency there are some rank-and-file employees unionized, while others are not, the nonunion members watch carefully the progress of those represented by the union. Therefore, management must take this situation into consideration in making concessions at the bargaining table.

8. What is the priority of the demand?

As stated previously, each proposal must be assigned its respective place in relation to other proposals. Its priority should be both in terms of its value to the union and its importance to management. By determining such priorities the negotiator can begin to identify items where agreement is likely and items where likely there will be serious differences. For example, a union request for partial pay for unused sick leave upon voluntary termination of employment might be a valuable benefit for both the union and management. On the other hand, a unon demand for an agency shop might be of high priority to the union for acceptance and high priority to management, but for rejection. Such a proposal would be headed for serious dispute.

The assignment of priority to the various demands is very helpful in the development of effective bargaining "packages." For example, if the union desperately wants a sick leave bank, and management is willing to grant such a request, management has a real opportunity to negotiate by buying out of the union's proposed contract a number of items unacceptable to management.

9. What is the effect of the demand on final settlement?

Every union demand must be evaluated in terms of how it will contribute to the final settlement on a total contract. If concession on a given proposal is irrelevant to the final agreement, chances are that it should be given very little consideration. However, an item that appears to be one that the union would strike over should be given serious attention. This is not to suggest, however, that concessions should be made on the basis of intimidation. Concessions should be made only because they lead toward an amicable agreement.

10. What impact does the demand have on the union?

Unions are political organizations. They are directed by the expressed wishes of the members. As such, the union is, in a sense, the alter ego of the employees. It not only speaks for the employees, but it can lead the employees. Therefore, management should deal with the union respectfully, and before responding to union demands should carefully examine the impact of the demand on the union with a number of points in mind:

a. The response of management in rejecting a union demand should not humiliate the union. There are many ways to say "no," as discussed elsewhere in this book. In rejecting a union proposal every effort should be made to minimize the pain to the union.

b. The acquiescence to some union demands can create instant heroism, while the rejection of some union demands can create instant martyrdom--both alternatives being unattractive to management. Therefore, all demands and responses need to be evaluated in terms of the effect on the strength of the union. Although no public agency should undertake a purposeful campaign to harm a union, management certainly should not provide a ready-made opportunity for the union to gain increased allegiance among the employees. After all, employee loyalty is a vital ingredient in delivering services to the public.

c. Will acceptance of the union proposal strengthen the cooperative relationship between the employer and the union? If so, then serious consideration should be given to the proposal. For example, if a small amount of released time with pay for union business will create a harmonious relationship, then perhaps such time off should be allowed. After all, the friendship of the union is an important asset to the employer.

In summary, by reviewing the ten simple considerations listed here before responding to a union proposal, the negotiator can minimize errors.

X. HOW TO BEGIN THE FLOW OF AGREEMENTS

For the novice negotiator, the first negotiations meeting can be the most difficult of all meetings. Just achieving that first tentative agreement is often a frustrating process. But beginning the flow of agreements need not be difficult if certain procedures are followed.

A. Procedural Matters Need to be Taken Care of First

Before substantive issues are dealt with, certain procedural matters should be handled first. Although some of the following suggestions are discussed elsewhere in this book, they need to be mentioned here also.

1. Talk informally with the union prior to the first session

a. The location of the meetings: As discussed previously, the setting for negotiations should be selected carefully and by mutual agreement.

b. The agenda: The parties should attempt to have an understanding as to what will transpire at the first meeting. Under normal circumstances, the first meeting is devoted to listening to the union explain its proposals.

c. Ground rules: If negotiations are to proceed smoothly, the parties should come to understandings on such matters as press releases, length of meetings, attendance, refreshments, record-keeping, etc. Otherwise, time is wasted on procedural matters rather tnan substantive matters.

d. The overall schedule for negotiations: All labor negotiations should have a specific beginning date and a specific ending date. Hopefully, the parties will reach an understanding on such a schedule.

B. Opening the Flow

At the first negotiations meeting there probably should be no attempt at tentative agreements, since that meeting is devoted primarily to obtaining an overview of the union's contract proposal. However, at the second or third meeting, agreements should begin to flow. The opening of the agreement process can be helped by a number of specific techniques, such as:

1. Have one or two acceptances ready at the second meeting

However, such concessions should not be perfunctory, but should be arranged so that the union has "worked" for them; otherwise, the agreement will have lost its value to the union.

2. Be ready to settle all issues at all meetings

If a negotiator is not ready to settle at all times, attractive deals can slip by without the negotiator being aware of the missed opportunity.

3. Offer a sweetener

Occasionally, the union will be on the verge of accepting an important counterproposal and with a minor additional concession from the other side of the table, the whole package can be wrapped up. Many an insecure negotiator has lost a good settlement by refusing to make one slight move.

4. Open on a positive note

The best way to open a negotiations session is with friendly chatter and refreshments; followed by negotiations which from the outset contain pleasant dialogue. This approach sets the stage for positive discussions later on when the issues become difficult.

5. Praise the opponent

No sound is as sweet as unsolicited praise! How difficult it is to attack those who have just expressed admiration. However, expressions of praise should be sincere and justified. They should not be transparently motivated to manipulate the opponent.

6. Understand the problem

There can be no proper solution to any negotiations proposal unless the proposal is understood. Is the proposal designed to solve a problem? If so, exactly what is the problem? Is the proposal designed to provide a new or expanded benefit to employees? If so, what exact value does this benefit have for employees? Once these questions are answered, the negotiator should set out to construct an appropriate response.

7. Divert attention from disagreement

To the extent appropriate, a skillful negotiator accentuates the positive and deemphasizes the negative. Dwelling on disagreements seldom serves any purpose, so various tactics should be employed to divert attention away from disagreeable issues. Some of the ways that unpleasant subjects can be avoided are as follows:

a. Change the subject

b. Tell a joke

c. Caucus

d. Go to the rest room

e. Recess or adjourn

8. Give reasons for rejections

It's almost impossible to get through the first few negotiations sessions without rejecting some proposals. Although there are many ways to say "no," as discussed elsewhere in this book, a proposal not accepted is a proposal rejected. Therefore, when a rejection is necessary, it should usually be accompanied by the reasons for the rejection. Negotiations is the process of give and take between parties in an effort to reach an agreement. Without any knowledge of the reason for the rejection of a proposal, it is difficult to prepare an alternate proposal which might be acceptable. Incidentally, there is no law that requires that all reasons be given at one time for a rejection. There are occasions when all reasons for a rejection should not be given all at once.

9. Be patient

Even if a negotiator's mind is made up on a given issue, he should continue to listen to the comments of the adversary. Patience is an important factor in negotiations. The mere willingness to wait until the other spokesperson is finished speaking is a form of concession. The union often has much to say, and the patience to listen to it all plays a vital role. After all, part of the union's function is to be sure that management is told exactly how the employees feel and what the employees want; even if management does not take the desired action.

10. Do not make management demands

True, collective bargaining is supposed to be a two-way process, but the collective bargaining process has not been designed as a tool for management to make demands of the employees. Management already has the power to direct the workforce, unless it negotiates that power away. To every extent possible, management should direct the workforce unilaterally, and avoid using the labor contract as the instrument to carry out its wishes. Although there are times that management may be compelled to make "demands" at the bargaining table, such demands should be handled as counterproposals to a union demand, rather than original demends from management.

For example, let's suppose that management, in order to save money, would like to cut back on planning time for teachers by having those teachers spend more time in the classroom teaching students. Rather than make such a demand at outset of negotiations, management should wait until such time as the union raises the issue of planning time; at which time management should respond with a counterproposal for less planning time. Although such a counterproposal is likely to be objectionable to the union regardless of how it is presented, the method suggested here usually works best.

11. Be prepared to close quickly

In order to take advantage of every good negotiations offer that is made, the negotiator must be ready to settle any issue at any time. This axiom does not necessarily require that the negotiator settle at the exact moment that an acceptable offer is made, however. There are many times when acceptance should be held back until the timing is right. But in order to begin the flow of agreements, the negotiator should be prepared to settle very quickly on a few carefully selected issues.

In the book Bargaining Tactics there is a section entitled, "Sleep On It," which suggests that most acceptable offers should not be agreed to immediately. The suggestion being that time should be taken to carefully study the proposal before giving an answer. However, during the first few negotiations meetings, the negotiator should be ready to settle at the table, without "sleeping on it." Such willingness to settle quickly not only accelerates the flow of agreements, but indicates a trust in the other team.

The first impression and the last memories of negotiations should ideally be pleasant. If every negotiations session could open by each negotiator making a concession to the other, and if every meeting could end with similar concessions, negotiations would be greatly enhanced.

This, however, is unfortunately not the case in most situations. Due to a variety of reasons, just the reverse occurs too often. Some negotiators try to assert their "macho" at the outset of each meeting, and then conclude each meeting only when the relationships are so bad that further negotiations would be pointless. This is not the formula for successful negotiations.

In every set of negotiations, there are a number of concessions which both parties can reasonably make. These concessions should be identified and presented at the right psychological point. If no other appropriate time presents itself, the beginning and ending of a meeting are good points for such moves. Compromises at the end provide an interim atmosphere for constructive homework. Concessions at the beginning of a session set the tone for the rest of the session.

12. Ignore some issues

Occasionally, either the management negotiator or the union negotiator may present a proposal or counterproposal which is totally unacceptable for some reason. Such a proposal may be purposely offensive; it may be irresponsibly extreme; or, it may be patently beyond the scope of bargaining.

In such cases, the best response is no response. If the objectionable item is ignored repeatedly, the issue might be forgotten by its originating party, and thus be disposed of with no harm done. However, if the originating party demands a response, and if the proposal is within the scope of bargaining, the best response might be a very brief statement intended to sidetrack the matter.

C. Conclusion

In summary, the first attempts at opening the flow of agreements are frequently awkward and detract from a productive relationship between the parties. By following the suggestions in this section, as well as other techniques which the reader has found to be effective, the first few negotiations sessions should provide the springboard for final agreement on the labor contract.

XI. HOW (AND WHEN) TO COMPROMISE

The easiest parts of negotiations are: (a) determining what you want, and (b) determining what is the least you will take. It is the process in between that is hard--compromise. And the real problem is determining how, when, why, and what to compromise.

At the outset of negotiations, both parties have some idea of what their final position will be on a given issue. Usually, these final positions are different, and require tough negotiations to come together. For example, the union would like to have a 20 percent salary increase, and asks for this increase at the opening session. The union, however, recognizes that it will likely have to settle for a lower 12 percent. On the other hand, the governing body would like to limit any increase to 5 percent, and counters this to the union's offer, realizing that it will probably have to settle for 8 percent. The final and real negotiations begin with the efforts to find a mutually agreeable percentage between 8 percent and 12 percent. It is the process of compromise that will lead the parties to the best solution.

But when do you compromise? Some negotiators seem never to recognize when the conditions are right for compromise. Over the years, the author has identified a number of conditions that make compromise the best possibility. Naturally, not all of these conditions must be present in order to make a compromise offer. But, before making a compromise, review the suggestions listed below.

1. A compromise should be made when a compromise will wrap up the package

If the offer is reasonable and conditions are right. As discussed elsewhere in this book, most negotiations offers have strings (conditions) attached, which means that an offer is conditioned upon the acceptance of other agreements on other issues. For example, an offer to increase employee salaries by 7 percent might be conditioned upon a requirement that the union withdraw requests for any increase in the employer's contribution to the employee insurance program. If the union should decide that it will drop its request for an improved insurance program, if management will offer an 8 percent salary increase, the issue is all but settled. If management does compromise and offers 8 percent, the package would be "wrapped up." Even if management offered to "split the difference," the union would likely agree. The point is that whenever a reasonable compromise can settle a number of issues at one time, the parties should give serious consideration to such a compromise.

2. A compromise should not be made unless the short- and long-range monetary costs are known

In too many negotiations situations, neither side of the bargaining table has an accurate computation of the monetary costs of individual offers--as well as the monetary cost of the entire contract proposal. The lack of such information can lead to disastrous results, such as a lack of funds to carry out commitments in the labor contract. The first step that should be taken when a proposal or counterproposal is received is to compute its exact cost; both short range and long range. For example, a proposal to add a salary longevity step to the salary scale after three years might be very attractive when offered. In three years, however, its financial impact could be devastating if, at the time of the offer, the majority of employees were at the top of the salary scale.

An experienced negotiator will have in his notes the exact cost of every proposal and counterproposal. He will also keep a summary of the total cost of all proposals. As offers and counter-offers are made, and as tentative agreements occur, the negotiator should keep a continued accounting of the impact of these proposals and agreements on the total authorized monetary limits. In other words, the chief negotiator usually has a total monetary limit which may not be exceeded except by specific authority given to the negotiator. Failure to maintain such elementary bookkeeping can result in making offers which will not be confirmed by the governing body, a situation which can lead to a variety of serious problems.

Remember, too, that some costs are temporary and some costs are permanent and automatically repetitive. For example, assuming no factors dictating otherwise, management would do better by applying $100.00 to the purchase of a filing cabinet rather than applying $100.00 to the salary scale of an employee. The file cabinet cost is over after its purchase, while the $100.00 increase in the employee's salary is automatically repeated each year thereafter. Furthermore, the file cabinet will be of obvious use for years, but the $100.00 salary increase likely will be forgotten by the time negotiations reopen.

3. Before a compromise is accepted or offered it should be written clearly

The chief source of labor contract grievances is found in the contract's language. In such grievances, there is usually a dispute over the interpretation of the language. Let's suppose that a labor contract calls for duty-free and uninterrupted lunch periods of thirty minutes, except in the case of "serious problems." Sooner or later, management is going to interrupt an employee's lunch period due to a condition which the employer considers to be a "serious problem." In such a situation there is no assurance that the employee whose lunch period has been interrupted will agree that a "serious problem" exists; thus giving rise to a potential grievance.

Obviously, in the above example the offer made and accepted was not clearly written and should not have been agreed to. The disputed clause could have been written in several improved ways. For example, the parties could have agreed to "an uninterrupted duty-free lunch period of thirty minutes." According to this language there would be no reason for exception. Or, the parties could have agreed to "an uninterrupted duty-free lunch period of thirty minutes, except in the case of emergencies, requiring the presence of the employee." Granted, this new phrase is subject to different interpretation, but it is an improvement over the phrase "serious problems."

4. A compromise can be made in order to diffuse an explosive situation

Most experienced negotiators have faced at some time in their career a confrontation at the bargaining table over some highly emotional issue. An agreement is almost impossible under such tense conditions and every effort should be made to defuse such disputes. Although there are numerous tactics which can be employed to resolve such disagreements, an effort at compromise can be the appropriate antidote.

At one time, the author found himself in a situation where the union urgently wanted the next negotiations session to take place within a week. The best time for the author was on a day which turned out to be a holiday for the employees. The union was furious that management would suggest that negotiations take place on a holiday. As a result, the management team made a compromise, and, frankly, the compromise was primarily motivated by a desire to disarm a potentially explosive development. Incidentally, in this particular case, the union was so pleased with management's concession that it was agreeable to holding the following two meetings on terms acceptable to management.

5. When you are ready for a compromise, the end of the meeting is a good time

To the extent reasonable, negotiations should open and end on a positive note, leaving the middle of the agenda to serious debate. By making a concession at the end of the meeting, both parties are left with pleasant thoughts about their relationships, thereby setting a productive tone for the next meeting. This tact is especially effective when the concession offered is accepted. As a matter of fact, if the opponent seems reluctant to accept such a concession, he should be encouraged to do so in the name of "good faith" and "quid pro quo." In other words--one good turn deserves another.

6. A compromise should be made when it will settle all remaining issues

The final hours of negotiations are usually the most difficult. The last session in negotiations is usually the session that contains all of the important issues. The last session is the session when the parties feel they have made all of the concessions that they could possibly make. This is where experience and the willingness to take a risk become important. When everything rides on one last concession, then the final position of the parties should be examined extra carefully in an effort to find that elusive solution. This last examination is imperative because frequently when the parties are on the verge of agreement, and that fleeting opportunity is missed, the parties often retreat to positions even more difficult to resolve.

In recent contract negotiations in a midwestern municipality, the parties were very close to an agreement--thanks largely to some very significant concessions made by the union. The union had been holding its members in line for a protracted period of time. The only issues that remained were salaries and a few minor non-cost items which the union signaled it would drop for a reasonable salary offer. For only one percentage more in salary, the union would have wrapped up the entire agreement, but for reasons not necessary to describe here, the governing body dug in and stonewalled negotiations. The governing body instructed the chief negotiator to give the union a "take it or leave it" offer, which he did, and the union left it. The union returned to its members at a special rally and gave a report. When the membership was informed of the full story, they became hostile and ordered the union to go back to the bargaining table with new, but harder, instructions.

To make a long and unnecessary story short, management eventually was forced to settle for a salary higher than what the union would have originally agreed to, plus management had to make other non-cost concessions which the union had signaled it was willing to forego. Such inept handling of negotiations is inexcusable, but in the public sector, where politics play such a major role in labor negotiations, this type of experience is unfortunately frequent.

7. A compromise should be made only if all team members are present

Although some negotiators practice "one-on-one" negotiations (the two chief spokesmen meeting in private and "cutting deals"), the author is opposed generally to this approach to negotiations and recommends "arms length" negotiations. "Arms length" negotiation is a more formal approach to negotiation which requires that all negotiations take place at official meetings where all members (except for excused absences) of both teams are present.

Such a formal approach to negotiations has several advantages, among which are:

a. There are witnesses to all transactions, thus avoiding rumors of "special deals" unauthorized offers, unsavory behavior, etc.

b. Members of the team feel that they have played an important part in negotiations.

c. There is less chance of an error being made with assistance from all team members.

Some of the disadvantages of "one-on-one" negotiations are:

a. The union may get the impression that an unfair deal was cut with management.

b. The governing body may lose its trust for its negotiator.

c. The chance of a negotiations error is increased.

d. In the absence of witnesses, the negotiator may not deliver on a promise made in private.

Not only should all team members be present when a compromise is made, but ideally all team members should agree to the compromise. Such unanimous agreement is not always possible, but it should generally be sought. In the event that there is no team agreement on a compromise, the chief spokesman must accept the responsibility for deciding if the compromise is to be offered.

8. A compromise should be made only if it is made by the chief spokesman

All offers and counter-offers should be made by the chief spokesman. There should be no concession made which has been offered by another team member. Any offer by a team member other than the chief negotiator simply undermines the chief spokesman. Any upstaging of the chief spokesman by another team member cannot be tolerated. The chief negotiator must be perceived as the official spokesman of his team and as the person in charge. Anything less detracts from the effectiveness of the negotiator to perform required tasks.

Infrequently, even a veteran labor negotiator will find himself in the position of having said no to an offer by the opponent, only to discover that a different answer had been communicated by a member of the governing body. If faced with such an awkward situation, the negotiator should immediately meet with the governing body for clarification of his position and of the official position of the governing body on the issue under negotiations. If such a meeting should indicate that the governing body's position is actually what was communicated by one of its members, then the official offer to the union should be presented by the chief spokesman. Although making a concession under such circumstances is painful at best, it is far preferable to allowing someone else to make the offer. At all costs, the opponent must understand that no official offer can be made unless it is made through the chief negotiator.

9. A compromise should not be made unless it is clearly understood

As a beginning negotiator, the author was presented with a proposal from a teacher's union which stated: "Teachers shall be entitled to academic freedom in their classrooms." All of the management team members were academicians who gave assurances that this offer was reasonable, if not innocuous. At the outset, therefore, there was an inclination to give favorable consideration to the union's proposal. However, visceral feelings indicated otherwise. As a result, the proposal was placed on the table for discussion. At first the union was very vague. However, under determined examination, it became apparent that "academic freedom" meant that teachers should be allowed to conduct themselves without restraint while in the classroom. Obviously, such freedom could rapidly lead to chaos.

In order to be certain that a proposal is understood, the negotiator should take several precautions.

a. The proposal should be examined by the entire team. Pitfalls, loopholes, and other weaknesses should be searched for. The proposal should be reviewed by the appropriate staff specialist. For example, a proposal regarding payroll deduction should be reviewed by the payroll supervisor. A proposal pertaining to employee transfers should be reviewed by the personnel director.

b. Where additional research is needed, it should be conducted. For example, a proposal for a sick leave bank is likely to be so unfamiliar to an employer that considerable research would be necessary before any position could be taken.

c. The union should be questioned at length on its proposal, to ascertain if there are hidden problems. For example, a union proposal that all actions on transfer requests be put in writing should be discussed at length. Chances are that the union is looking for more than just a simple answer to transfer requests.

10. The gaining of good will can be sufficient reason to compromise

When two negotiators have achieved a sufficient degree of mutual trust, they are sometimes able to give favors and make concessions without a specific favor or concession in return. This approach will generally work on nonsubstantive issues, such as procedural matters of when and where to meet, the length of meetings, who will provide refreshments, etc. Good will and rapport are valuable assets in negotiations, and as such should be actively sought. Certainly, negotiations proceed better with peaceful relations than with hostile ones.

There is a risk, however, in becoming too friendly. Close friendship between negotiators can make necessary rejections of proposals difficult--or can lead the negotiator into accepting a proposal which otherwise would not have been accepted. Good will in negotiations is one thing, friendship is another.

Some negotiators seem unable to be civil at the bargaining table out of fear that civility will be perceived as a weakness. Some negotiators seem to need hostility in order to bolster their will to resist the opponent, as if labor negotiations is some form of warfare. Fortunately, such traits are usually associated with the inexperienced and incompetent negotiator, and in most cases, both negotiators recognize the value of good will at the bargaining table.

11. All loose ends should be tied before compromise

An inexperienced negotiator will sometimes compromise on an issue before he fully understands either his own offer or that of the opponent. In such situations the negotiator often leaves "loose ends" to tentative agreement. The author was working with a team of administrators a few years ago and the team was ready to compromise with the union by granting pay for accumulated sick leave, even though a number of unanswered questions existed in the author's mind. Among the "loose ends" that the team apparently was willing to leave were the following:

a. Would pay for accumulated sick leave be granted only upon retirement?
b. If so, what is "retirement"?
c. Would such pay be granted upon separation?
d. If so, what is "separation"?
e. What rate of pay would be granted for accumulated sick leave?
f. What limit would there be to accumulation of sick leave for which pay could be received?

Before offering a compromise, or a tentative agreement on any issue, the negotiator, with the aid of the team, should explore carefully all of the ramifications of the offer. A negotiations offer cannot leave anything for assumption. An "understanding" in labor negotiations is usually not worth the paper it's not written on. For more information on what factors to consider before making a compromise, see the section in this book entitled, "How To Evaluate Demands."

12. You can compromise if it's not a freebie

There is an axiom in labor negotiations which states: "Nothing should be given away free." There are no "freebies" in the process of making a compromise. Every single compromise must receive something in return, even if it is an intangible return like good will. This rule, however, does not preclude kindness, courtesy, and an occasional favor. Successful negotiations do require a modicum of civility.

When the union states that one of its proposals will not cost anything, generally such a statement will turn out to be incorrect. All union offers cost something. They either cost money, resources, time, space, or energy; all of which are valuable to the employer. No matter what the proposal is, it must eventually result in somebody doing something that would not otherwise normally be done. For example, here are some union proposals which do not cost anything according to the union:

a. Payroll deduction for membership dues. Although payroll deduction for union dues appears on the surface to be a simple task, in actuality it is quite complicated and does cost money; despite the claims of the union to the contrary. On the average, such a payroll deduction would cost about $4.00 per member. If there are 1,000 members who wish to have their dues deducted, that's $4,000 per year!

b. Bulletin board space for the union. A typical bulletin board of four feet by ten feet costs about $300.00, with installation. If the union is granted half of the space on ten bulletin boards, the total cost to the employer would be $1,500,00!

c. Lounge space for employees. At the current $100.00 per square foot for construction, one lounge (unfurnished), 1,000 square feet, would cost the employer $100,000!

As one can see, there are no freebies in negotiations.

13. You should compromise when ordered to do so by your employer

Under normal circumstances the negotiator is given the parameters for negotiations before negotiations begin. When this procedure is followed, the chief spokesman can plan the negotiations strategy more effectively than if the negotiations limits were gradually revealed throughout the negotiations process. Under such ideal circumstances the negotiator can plan the overall strategy and arrange compromises in the most productive way.

Under ideal circumstances the governing body and the chief executive should seek the advice of their expert for labor relations. If the negotiator is experienced, chances are that he knows better than the governing body how far he should compromise on each and every item (except on the issue of total funds to be expended in order to reach a settlement). Only the governing body is in a position to decide what its total budget will be and how the total budget should be apportioned to the various accounts. However, on most other issues the chief negotiator should be aware of the extent to which compromises can be made in order to reach an acceptable labor contract.

There are times, however, when a governing body may call for a compromise which the chief negotiator may not recommend. Although the chief negotiator and the employer should generally be in agreement on the general direction of negotiations, occasions do sometimes arise when the two do not agree. Hopefully, such occasions are infrequent. The author has experienced a few situations where he was willing to be more firm than the governing body. On one occasion negotiations were near an end and almost all issues had been resolved except for salaries, binding arbitration of grievances, and a request for the agency shop; all three of which appearing to be demands of high priority to the union. Negotiations were temporarily stalled; the union called several "emergency" meetings and threatened to go on strike. Based on inside information and general intuition, I was convinced that the union was testing to see if the governing body could stand up to threats. I was confident that after a short period of time the union would ask for another negotiations meeting and would settle the whole matter for a small compromise on salaries and an offer for "advisory" arbitration of grievances. Such an offer would cause the union to drop its proposal for an agency shop. Despite my efforts to persuade the governing body to this point of view, it panicked and ordered that a compromise be made by offering to agree to the agency shop.

At that point the situation was bad enough, since I was being directed to make a concession which I considered dangerous. Furthermore, it would be obvious to the union that I had been ordered to make such a concession to avoid a strike. To complicate matters further, however, a member of the governing body leaked the action taken in executive session by the governing body. Consequently, the union was convinced that it had the governing body running scared; and, frankly, the union had surmised the attitude correctly.

I returned to the bargaining table and offered to settle the entire contract by acquiescing to the union's demand for the agency shop. However, at this point, the union had been encouraged to believe that its threats were effective. Consequently, it refused the offer, demanding that the governing body also agree to an additional salary increase and binding arbitration of grievances. To end the story, I was ordered again to capitulate and negotiations ended with major concessions to the union. I did not return to that community the following year, but I was told that the union tried the same strategy again. However, the governing body had some new members elected who did not threaten so easily. As a result, the union went on strike, but a more favorable contract was finally settled upon.

14. It's time to concede with the opponent obviously wins the debate

There are times that an agreement on a given issue depends upon convincing the other party of the merits of your position. In such cases debate is a common phenomenon at the bargaining table. However, when an agreement hinges on winning an argument, one must be sure to win the argument. To persist in one's position after obviously losing the disagreement only serves to undermine one's credibility for future arguments. When an argument is lost, the best course of action is to admit defeat as gracefully as possible, and quickly move on to other items.

15. A compromise can be used to avoid an issue being blown all out of proportion

Some issues which appear to be of little significance at the outset of bargaining can, for a variety of reasons, become full-blown controversies, subverting the major issues of negotiations. In such cases, a quick concession may be the best solution.

For example, a colleague of the author was involved in negotiations with a union where one of the union demands was for a meeting between the two spokesmen at least once each month during the period of the contract. For no other reason than stubbornness, the management representative refused to agree to such a proposal, despite the reasonable pleas and arguments of the opposing negotiator. Despite a suggestion that he grant the union its request, the union's proposal was turned down repeatedly--apparently in a manner which offended the union. As a result, the issue became a major obstacle in negotiations. As long as that issue remained unresolved, negotiations were poisoned.

Finally, the union held a mass meeting and, among other items discussed, expressed its anger over not being allowed to meet with management during the term of the contract. This information was picked up by the press and read the next day by certain members of the governing body for that agency. Immediately, the chairman of the governing body contacted the chief executive and demanded an explanation. Needless to say, the management representative soon agreed to meet with the union on a regular basis. Unfortunately, however, irreparable harm had been done to their relationship.

16. A concession can be made when you think it can be sold to the union membership

The ultimate objective of labor negotiations is to construct a written contract governing compensation, benefits, and working conditions of employees. Unless such a contract can be sold to the parties, then negotiations have been for naught. A compromise that cannot be sold to either party is a useless compromise, unless it is only one concession toward a larger concession.

Let's assume that negotiations are near an end and only salary remains as an unresolved issue. Let's further assume that the current offer of 7 percent is one that the management team knows will not be accepted by the union. The union's position is 11 percent and has given some indication that it might settle for 10 percent. Let's further assume that management is reasonably certain that the membership, in a ratification vote, would accept 9 percent. Given such a hypothetical situation, and under the right bargaining conditions, a compromise final offer of 9 percent would be in order. Naturally, how the offer is made is a matter of negotiations skill.

17. No compromise should be made if it cannot be sold to the governing body

One of the worst mistakes that a negotiator can make is to shake hands on a tentative contract only to have it rejected by the employer. Therefore, before a final agreement is tentatively settled on, the negotiator should be certain that it will be approved by the governing body and ratified by the membership. Anything less will inevitably lead to a serious problem.

This rule raises an interesting question about what type of authority a negotiator should have. Some negotiators receive explicit instructions on each and every issue by the employer. Other negotiators operate under very broad guidelines. The advantage of the first approach is that there is no doubt as to what the governing body wants and authorizes. The disadvantage, however, of this approach is that it removes needed negotiations flexibility from the chief negotiator. The advantage of the second approach, i.e., broad guidelines, is that the negotiator is given ample negotiations flexibility to "wheel and deal." However, the disadvantage is that there is no guarantee that the governing body will approve each and every recommendation in the proposed contract.

The author definitely prefers an approach to negotiations which gives the broadest possible leeway. In most situations, the author is best able to effectively work under only four simple authorizations for negotiations from an employer. Those four simple guidelines are:

a. Negotiations shall not result in an expenditure of funds greater than that authorized.

b. The labor contract shall not deprive the governing body of its policy-making powers to govern the agency.

c. The management team shall retain its full authority to direct the workforce.

d. There shall be no reduction in the quality or quantity of work performed by employees.

In most situations these guidelines are sufficient for the experienced negotiator. Should doubt arise during negotiations as to the position of the governing body on a given matter, a quick inquiry can be made.

18. A compromise should not be made if the proposal is nonnegotiable

Any compromise on a proposal which is not a required topics of negotiations automatically makes the matter negotiable. Regardless of what the bargaining law may say about the scope of bargaining, the final determinant of what is negotiable is what the parties actually negotiate.

But keep in mind that the more a nonnegotiable topic is discussed, the more likely that it is being negotiated. The best way to handle a subject which is not a mandatory topic of bargaining is to say only once: "This proposal is not a mandatory topic of bargaining and we therefore decline to negotiate it." For those who wish to explore this concept further, refer to the section of this book entitled: "How to Control the Scope of Negotiations."

19. A compromise is in order when the timing is right

Timing can be a crucial act in negotiations. Unfortunately, there are no standard rules to determine correct timing. Each situation is different and must be dealt with on its own individual merits. Timing is the ability to present a proposal at the most propitious moment. The skill of timing is based upon the ability to quickly and thoroughly assess complex situations, along with a reliable sense of intuition.

Here is a very elementary example of how timing can affect the outcome of negotiations. An 8 percent salary offer made at the outset of negotiations would probably be turned down. However, that same offer if withheld until near the end of negotiations, under the right circumstances, might be viewed as a very favorable offer. Why? Because an offer of 8 percent at the beginning of negotiations is poor timing for a lot of reasons:

a. The union needs to have the feeling that it has worked for any offers made.

b. The membership is not ready to think seriously about salaries until later in the year.

c. An offer of 8 percent at the beginning of negotiations is actually throwing 8 percent away, as far as negotiations is concerned.

d. An offer of 8 percent should not be made until almost all other financial issues have been resolved.

As the chief negotiator plans the mastery strategy, timing is an important element which should be given consideration for each and every issue.

20. A compromise should not be the result of threat

To the extent possible threats should be avoided at the bargaining table. A threat is an expression of intent to inflict harm if certain action is taken or not taken. Threat involves the use of power to force someone to take action which would not be taken under voluntary conditions. By inserting the threat to use power in negotiations, the basis for making compromises moves from reason to strength. Threats cause concessions to be made not because they are proper, but because they avoid pain.

When either party compromises solely on the basis of threat, then a lesson has been taught that threats work in negotiations. If a threat must be used, it should be carefully veiled and accompanied by a logical argument as to why a certain offer should be accepted. By requiring that a concession be made solely on the basis of threat, the opponent is often driven into a position where there is no choice but to counter with a stronger threat.

If a concession appears to be required in order to stop some unacceptable threatened action, the threatened party should find some sound reason (other than fear of the threatened action) to justify the concession; otherwise, the use of threats can become a permanent part of negotiations.

21. A compromise can be made when there is a reasonable "quid pro quo"

Negotiations is the process of giving and taking until a final accommodation is reached. This means that if the union wants, it must give. In other words, negotiations is based upon quid pro quo--giving for something in exchange. Without quid pro quo there can be no labor contract.

A compromise should be made when the negotiator concludes that the counter offer is worthwhile. For example, if there were twenty unresolved items on the table and the union offered to withdraw them all if management would raise its salary offer by 1 percent, management should consider such a counterproposal very carefully. However, an offer by the union to withdraw its request to use bulletin boards if management would increase its salary offer by 5 percent, would be a very poor trade.

There are no set rules for what constitutes a reasonable trade in labor negotiations. Each offer is different, and the circumstances surrounding each offer are different. Therefore, each offer and counteroffer must be examined carefully on its own individual merits.

In summary, there are many occasions when a compromise is in order. By reviewing the suggestions made here, the negitiator should know when and under what conditions to compromise.

XII. HOW TO MAKE NEGOTIATIONS WORK

Although there are many factors involved in making negotiations work right, there are four special factors which should be highlighted. Successful negotiations require that:

1. There be trust between the chief negotiators; otherwise, so much time and energy is wasted on protective language that an agreement becomes difficult to reach. The spoken and written word are often imprecise expressions of thoughts and intentions. People who want to argue can argue over the meaning of most words and statements, making understanding impossible. If negotiators are to enter into a written labor contract, then there must be a willingness to accept the language which has been developed mutually.
2. The issue under consideration must be negotiable, i.e., it must be within the permissible scope of negotiations. For example, school teachers cannot negotiate the selection of school board members. Any demand which is not negotiable, but which is insisted upon, will inevitably create an obstacle to any agreement between the parties.
3. Both parties must give as well as take. Labor negotiations is a two-way process. Both parties must be willing to give in order to get. Ideally, labor negotiations should involve a process whereby both management and labor come to an understanding on salaries, benefits, and working conditions which is mutually

advantageous. A bargaining process which requires that one party do most of the giving will eventually backfire.

4. The spokesmen have full authority to enter into agreements. If a final labor contract is to be achieved, then the spokesmen must have the authority to make offers, make concessions, and enter into tentative agreements. Without such powers there can be no labor contract.

A. Special Tactics

The book, Bargaining Tactics, contains over 300 practical techniques which can be used at the bargaining table in labor relations. These tactics were compiled as a result of over fifteen years of negotiations, lecturing, and writing on the subject of labor negotiations in the public sector. After the book had been printed and placed on the market, and work had begun on Negotiations Strategies, the author gleaned from his notes numerous bargaining tactics which were not included in the original book. Therefore, these additional tactics are listed and briefly described in this section. These tactics, like those in the original book, have all been used in field conditions and are recommended as useful techniques.

1. Words do make a difference

There are effective ways and ineffective ways to use language in negotiations. Here is a simple example of three ways that management can respond to the same question from the union:

a. Poor use of language. Union spokesman: "How much percentage salary increase will you give to the employees?"
Management response: "Oh, I'd say around 7 percent."

In this case the management negotiator has stated that the lowest salary offer will be 7 percent.

b. Better use of language. Union spokesman: "How much percentage salary increase will you give to the employees?" Management response: "What's the least that you will accept?" This response throws the responsibility of additional response back on the union.

c. Best use of language. Union spokesman: "How much percentage salary increase will you give to the employees?" Management response: "Who said anything about a salary increase?" This response indicates to the union that there will be no serious salary offer from management until the union makes a reasonable offer.

2. Difficult questions can be responded to in many different ways

Many questions in negotiations are carefully contrived by the opposing negotiator to obtain information helpful to the opponent and harmful to the negotiator from whom the information is being sought. Some inexperienced negotiators seem to think that all questions must be answered, and that all information asked for must be provided. In fact, there are many ways to respond to difficult questions or questions which seek information not for release. For example, the negotiator can:

a. Obfuscate, i.e., the response can be purposefully confusing.

b. Answer a different question. Sometimes if the negotiator does not wish to answer an objectionable question, but does not want to so state, a response can be given to a similar, but different, question.

c. Defer the matter. Frequently, questions which are postponed are forgotten.

d. Say: "I don't understand the question." This response not only gives needed time to think up an answer, but it may allow the question to be modified along more acceptable lines.

e. Qualify the answer. Some difficult questions can be handled by giving a qualified answer. Such an answer protects the respondent from being committed to a position prematurely. For example, in response to a question from the union spokesman, "Do you believe in a fair promotion policy?", a qualified response would be: "Definitely, as long as you accept my definition of terms such as 'fair.'"

3. Bogus concessions have their place

Not all concessions must be substantive in nature. Some responses to a proposal can be passed off as a concession when in fact no real concession has been made. Here are some responses which often are perceived by the opponent as concessions:

a. Sometimes the respondent to a proposal does not want to accept the proposal, reject the proposal, or modify the proposal. In such cases the response can be: "I'll consider your proposal." Under the right conditions such a response can be viewed as a concession without any real movement on an issue.

b. Listening is a form of concession. Listening which is perceived to be sincere is often viewed by the party making a request as movement toward finding a solution.

c. Courteous discussion of a proposal is another form of concession because the respondent has expressed a willingness to explore the proposal under consideration.

d. A proposal referred to other authorities for study is also a form of concession in that it is neither a rejection of the proposal nor a refusal to consider the proposal.

4. Good listening is an important quality in negotiations

Most of the time spent in negotiations is involved in listening and watching. Since the rate of thinking is much faster than the rate of speaking, there is a constant risk of being distracted due to this discrepancy. The mind of the listener is racing ahead as the spoken words of the opponent slowly drift across the table. To make listening more effective, several simple rules should be followed:

a. Listen for hidden meanings. Many statements indicating one thought are really attempts to mask another thought. The listener must be very perceptive to detect such deception.

b. Watch the nonverbal signals. Although the author does not have a great deal of faith in interpreting body language, there are some reliable nonverbal activities of a spokesman which can add to the meaning of the spoken word.

c. Silently argue with the spokesman, while keeping notes which can be referred to at the appropriate time. Unless notes are kept especially when the speaker is presenting a long monologue, there is a significant chance that not all salient points will be remembered and considered.

d. Think ahead of the speaker. Try to anticipate what will be said. This disciplined approach to listening forces the listener to follow all of the details of the presentation being made.

e. Periodically summarize what has been said. Such summaries give both parties an opportunity to be sure that full understanding has been achieved.

f. Listen for what is not said. As an experienced counselor, personnel director, and negotiator, the author learned very early in his career to always ask silently of a speaker: "Why didn't he say . . . .?" What people don't say is often more telling than what they do say. For example, should the opponent respond to an offer by saying: "No, I don't think we can accept that." One should ask why the respondent did not clearly say: "No. We will not accept that under any conditions."

g. Distractions should be minimized. There are many factors which interfere with good listening--prejudices, emotions, worries, poor health, noise, or confusion--all can distract the listener. Therefore, the disciplined listener must monitor constantly the quality of his listening. If points are being missed, there should be a self-examination to determine if there are any distractions present. If so, such distractions should be neutralized to the extent possible.

5. Make the opponent fee important

The progress of negotiations can be improved by avoiding hostile relations at the bargaining table and encouraging friendly relations. There are numerous tactics which can be employed to create a favorable relationship between the parties, among which are:

a. Reiterate the opponent's point of view. Nothing is so sweet as hearing one's point of view repeated by someone else. Such reiteration not only indicates respect for the other's point of view, but serves as a test of whether or not the opponent's point of view is understood.

b. Show acceptance of the person. Although a number of negotiations proposals may be unacceptable, the negotiator should indicate clearly that the person making the proposal is not unacceptable. This can be done by using a number of techniques designed to enhance the image of the opponent, while rejecting the actual proposal of the opponent.

c. Treat the problem as your own. When the union presents a proposal at the bargaining table, the proposal is usually designed to solve some problem. To the extent appropriate, such problems should be viewed as problems that management must seek a solution to. For example, should a union propose that vacancies be posted at work sites, management should ask questions to become familiar with what problem the proposal is designed to solve. It may then proceed to resolve the problem as a management concern.

d. Show that you are prepared for each meeting. Normally, each negotiations session ends with each party having homework assignments. This homework should be completed prior to the next meeting. For example, if the union has proposed that certain employees be paid for "wash-up" time, and management promises to "consider" the proposal, and respond at the next meeting, then management should come to the next meeting thoroughly prepared to discuss the whole issue of wash-up time. Such thorough preparation is in itself a sign of respect for the opponent.

In summary, try to avoid behavior which causes a negative response from the opponent. Any response to the union negotiator which causes feelings of stupidity, rejection, belittlement, or hatred should be avoided.

6. Float a trial balloon

There are times when a negotiator may want to make a proposal, but is uncertain as to the response of the other negotiator. Management may want to propose a "no strike" pledge, but is hesitant to officially propose such for fear of causing a negative reaction from the union. In such a situation, management might venture an obtuse reference to a no strike pledge as a part of a related response. Such an approach raises the issue without making a formal proposal, allowing management to become aware of the union's attitude toward a no strike pledge, before a formal proposal is made. By being privy to the union's arguments in advance of actually making a proposal, management can better prepare for its eventual presentation on the topic.

7. Some unreasonable demands camouflage grievances

Occasionally a negotiations proposal at the bargaining table has originated from a grievance of a single employee. Many union contract proposals come from the employees themselves. Some of those proposals are brought to the table simply to appease the complaint of one union member who has a special gripe. Under careful questioning such proposals can be identified and often can be resolved outside of the bargaining relationship, since the union seldom considers such matters of high bargaining priority.

8. Unions are not businesses; they are political bodies

All unions are made up of special interest groups, just as in the larger civic body politic. As such, part of the negotiator's task is to make the most of the political nature of the union. Although broad bargaining units are usually preferable to management as compared to narrow units, both have their political factions which play their part in the way the union operates. However, unions also have majority interests, which if important enough, usually prevail over the various special and minority interests within the union. For example, salary improvement is usually an overriding majority interest, while who pays for the coffee at the bargaining sessions is a relatively unimportant minority interest.

9. At least one member of the management negotiating team should have rank-and-file employment background

Too often managers either have not come up from the ranks, or their experience in the ranks was long ago. Effective labor negotiations (from management's point of view) requires that there be immediate and first-hand knowledge of how employees view their work situations. Some of the best management team members are persons who were recently promoted to the management team and who had been active union participants. The presences of such persons on the negotiating team gives management a definite advantage in conducting its negotiations strategy. Incidentally, have you ever heard of an ex-manager becoming a union negotiator?

10. A friendly respectful equalitarian approach should be used

Throughout this book reference is made to the importance of maintaining rapport with the opposing team, and techniques are offered for achieving such rapport. Two important ingredients for successful relations between the teams are demonstrated respect and a sense of equality. Respect, on the one hand, will disarm the opponent, while an acceptance of him as an equal will create the basic foundations for both give and take at the bargaining table.

11. Follow simple rules to understanding

Although books have been written on the subject of communications between humans, the author has found the following four simple rules to be very helpful:

a. Present only one simple concept at a time. Avoid complex proposals and counterproposals.

b. Use short simple sentences. Avoid long complex sentences.

c. Use simple Anglo-Saxon words. Avoid sophisticated foreign words and phrases.

d. Repeat the important points. As most teachers know, repetition is a legitimate aspect of learning.

12. You can't argue over facts

In persuading the opponent to change a point of view, facts are more persuasive than opinions. Facts don't lie. However, one must be sure of the facts before they are presented; otherwise, they can turn out to be counterproductive.

By way of hypothetical example, let's pretend that a union proposes that employees be granted tuition reimbursement for job-related instruction off the job. Management responds on the basis of what it considers to be a fact (but is in reality only an opinion) by stating: "Our employees have no interest in such a plan, so therefore we reject your proposal." To which the union respondes: "You're wrong! Here is a valid survey of our members indicating that 75 percent of them would take such classes."

In this hypothetical case, management did not have its facts straight. Furthermore, since it gave only one reason for rejecting the union proposal, management has been set up so that it must either accept the proposal or belatedly enter another reason for rejection; thus, making itself look foolish and undermining its credibility.

13. Do not unnecessarily delay negotiations

The actual amount of time to complete negotiations which results in a labor contract varies from case to case. The only general rule that can be followed is: Negotiations should proceed at that pace which produces steady progress. Anything else usually results in a problem. Negotiations conducted hurriedly, or negotiations which go on endlessly with no apparent progress, usually are negotiations in trouble. Although an experienced negotiator may be able to abbreviate negotiations to an advantage, unjustifiable delays in negotiations usually work to the advantage of the union. Unresolved negotiations issues tend to unite the union and make its position stronger than it otherwise would have been.

14. Establish good personal communications procedures

Collective bargaining should be reserved for negotiable items. The bargaining table should not be cluttered with employee complaints and grievances, as well as discussion of nonnegotiable administrative and policy matters. If there is no outlet for employee and union communications other than collective bargaining, then the bargaining process will be used for purposes other than negotiations.

To help assure that the negotiations process is limited to the substantive issues of compensation, benefits, and working conditions, several other channels of communications should be available as an outlet for employee and union input.

a. A good grievance procedure is of mutual benefit to labor and management. Such a procedure provides the employee with the opportunity to see a just solution to an allegation that his labor contract rights have been violated. Such a procedure also provides management with the advantage of a peaceful opportunity to maintain labor tranquility.

b. A good complaint procedure can also be helpful in the bargaining process in that employees have a forum other than the bargaining table to air their complaints. Depending upon local circumstances a grievance procedure and a complaint procedure can be separate procedures or they can be merged into one procedure.

c. "Meet-and-confer" procedures between management and labor can be used to discuss nonnegotiable items. Where such a procedure is used the team members should be different than those involved in negotiations. Naturally, there should be a clear mutual understanding that meet-and-confer procedures are significantly different from negotiations procedures.

d. Employee councils can also play a vital role in a total employee relations program. Although these councils are sometimes viewed with suspicion by the union, such councils can provide a needed two-way communications channel between management and employees. These councils are usually elected by the rank and file workers and serve only in an advisory capacity. In large government agencies there can be separate councils for each group of employees (e.g., secretaries, service presonnel, etc.), while in small government agencies one council can represent all employees. Naturally, these councils do not negotiate with management or discuss negotiable topics.

e. Union-management meetings can serve a real need in agencies where there is an active union or unions. In such situations a representative of management and a representative of the union meet on a regular basis to discuss (not negotiate) matters of mutual interest.

15. He who hesitates is lost

As stated previously, each negotiator should know at what point and under what conditions an offer is acceptable on each item; as well as on the total agreement. Failure in not being so prepared can result in a good settlement being missed. Although the general rule in considering offers is to "sleep on it," there are offers which should be accepted quickly, because there may not be a second chance.

16. One bad apple spoils the barrel

The author remembers one particular negotiations experience in a large school district where a number of especially bothersome proposals remained on the table because the proposals were allegedly introduced to counter improper behavior of the supervisory staff. After considerable discussion and investigations, outside of negotiations, it was discovered that all of the proposals were presented to correct the actions of one school principal who was conducting himself with teachers in an improper manner. As a result of this one weak administrator, the progress of the entire negotiations process was complicated and prolonged, causing harm to the credibility of management generally. The problems were partially solved near the end of negotiations by the dismissal of the principal. However, the moral to this anecdote is that the quality of the day-to-day management of government can have a direct impact on labor negotiations.

17. Do not postpone the writing of tentative agreements

Once a tentative agreement has been reached on an issue (or issues) it should be set in writing, initialed by both negotiators, and copied for each team's record. To the experienced negotiator this advice is elementary. Nevertheless, the advice is repeated here because it is of such import. One of the most serious errors that negotiators can make is to fail to reduce tentative verbal agreements to writing immediately. Failure to follow this simple rule increases dangerously the likelihood that the tentative agreement will be lost. If a verbal agreemens is left verbal, to be put in writing later on, several problems will arise:

a. One or both of the parties will change their positions.

b. When the agreement is written the parties will discover more disagreements than agreements.

c. Because of a and b above, the parties will become very hostile toward each other, making allegations of bad faith, misrepresentation, etc.

18. Never say "final" unless you mean it . . . and can back it up

How many times have we heard, "This is my final offer," only to have the speaker of this popular phrase later change position and make another offer? Making a final offer and then backing off may work in isolated situations, but the tactic does not work in labor relations as a repeated tactic. "Final" means "final," and there should be no exceptions.

When the chief negotiator says, "This is my final offer," then he must be prepared to make the ultimatum stick. A final offer means further attempts at compromise are useless. A final offer ends compromise on that issue. Should a negotiator fail to make a final offer adhere, his credibility is undermined, particularly if that behavior is habitual.

To avoid being placed in a position where final offers are necessary, a negotiator should always leave room to maneuver. Granted, there must be a final position on most issues individually, but there really is no final position on an entire contract offer, unless the negotiator has allowed himself to work into a position where no further movement is possible.

19. Play one card at a time

Sometimes a negotiator is tempted to dispense with the "game-playing" of negotiations and move directly to what appears to be a fair settlement for both parties. Such temptation must not be succumbed to unless the other party makes such an offer which is acceptable to you. Even then, the offer should not be accepted without discussion and some negotiations.

The best practice is to plan one's overall negotiations strategy, plot individual moves, and then make those moves one step at a time.

20. Listening is better than talking

When one person is speaking to another, the listener is learning; the speaker is not. As a general rule, the effective negotiator is one who listens carefully, prods the speaker to release needed information, and then listens some more.

The author worked with one negotiator who was always willing to talk first in conversations and continued to talk as long as encouraged to do so. As a result, I could usually determine his position on almost any issue before revealing my own position. Consequently, my offers (or responses) were generally more thorough than would have been the case if the other negotiator had been reticent.

XIII. HOW TO MAKE BENEFITS WORK FOR YOU

Employees are hired to give their time, energy, and skills to an employer in order to accomplish jobs assigned to them. In return for giving their time, energy, and skills, employees are given rewards in the form of wages and benefits. The purpose of collective bargaining is to attempt to determine what these wages and benefits shall be. In most cases, in both the public and private sectors, "working conditions" are also a part of negotiations since working conditions can impact on the nature of services rendered by the employees. This concept is discussed in the chapter dealing with the scope of negotiations.

The purpose of wages and benefits varies according to one's perspective, and there are numerous and divergent perspectives in the political public sector regarding the role of benefits in collective bargaining. For example, there is the perspective of:

1. The union
2. The employees
3. The chief executive of the agency
4. The supervisory force
5. The governing body of the agency
6. The public-at-large
7. The specific beneficiaries of the government agency

Each of these groups views benefits in collective bargaining in a different way. For example:

1. The union views the award of benefits to employees as a means to enhance the image of the union among the employees, thereby increasing the overall power of the union. Furthermore, the union will generally be more interested in benefits for the union (and its leadership) than in benefits for the rank and file. For example, if management were to give ten-man days off with pay as determined by the union, the days would inevitably go to the union leaders for union business.
2. The employees view benefits as a measure of the reward for doing their job, and they view collective bargaining as a vehicle for expressing their wishes.
3. The governing body of a public agency views the award of benefits in a number of ways:
   a. Benefits are viewed as a part of a total cost package;
   b. Benefits can be a means to buy labor peace;
   c. Benefits can be a means to buy the votes of the public employees to keep incumbent politicians in office; and
   d. Benefits are viewed for the impact they have on the continued right to govern the agency.
4. The chief executive is often the man caught in the middle who views the benefits of the employees with mixed feelings. The chief executive must deal with the management staff, the governing body, the employees, the union, and the public, all of which must be considered in assessing employee benefits.

5. The supervisory staff views benefits from a rather narrow perspective. The main consideration of the managers for employee benefits is to what extent the benefits agreed to at the bargaining table interfere with the right of the supervisory staff to direct the workforce. After all, a major function of the supervisory staff is to supervise the workers.
6. The public-at-large as taxpayers often views benefits in terms of whether or not the benefits granted public employees are reasonably equitable in comparison to those granted to private industry employees.
7. The specific beneficiaries of the services of the government agency view negotiated benefits in terms of whether or not those benefits enhance the services rendered. For example, college students in a public college become concerned with faculty benefits; e.g., salaries, when tuition rates become a serious obstacle to attending college. On the other hand, homeowners might accept higher salaries for trash collectors if the trash collection service to homes is improved.

Generally speaking, benefits can be categorized according to whether or not the benefit is compensable or noncompensable, and whether the benefit is for the employees or the union. For example, there are:

1. Compensable union benefits which include:
    a. Paid leave for union officials
    b. Contribution by the employer to the union's welfare fund
2. Noncompensable union benefits which include:
    a. Automatic dues deduction
    b. Union use of agency space and facilities

3. Employee compensable benefits which include:
    a. Wages
    b. Paid insurance premiums
4. Employee noncompensable benefits which include:
    a. Parking space
    b. Rest breaks

The term "noncompensable" does not mean that the item is a noncost item. As discussed elsewhere in this book, as well as in the book, Bargaining Tactics, all items have some cost associated with them.

Employee and union benefits also can be placed in the following groups:

Pay for time worked
Pay for time not worked
Direct cost benefits
Indirect cost benefits

The major instances for paying for time worked are:

1. Overtime pay
2. Severance pay, based on seniority
3. Cost-of-living adjustments (COLA)
4. Pay for sixth or seventh day
5. Bonuses
6. Saturday and/or Sunday pay
7. Merit pay increases
8. Extra-duty pay
9. Shift differential pay
10. Work-through-lunch pay
11. Regular salary for regular time

Pay for time not worked could include:

1. Call-in pay
2. Holiday pay
3. Short-notice pay
4. Vacation pay
5. Pay to attend union meetings
6. Inclement weather pay
7. Wash-up time
8. Rest periods
9. Pay for grievance processing
10. Various leaves, such as:
    a. Sick
    b. Jury duty
    c. Parental
    d. Military
    e. Personal
    f. In-service
    g. Sabbatic
    h. Bereavement
    i. Election day
    j. Emergency
    k. Others

Some direct cost benefits might include:

1. Disability income insurance
2. Health care insurance
3. Use of on-site medical services
4. Accident insurance

5. Liability insurance
6. Illness insurance
7. Retirement benefits
8. Workmen's compensation
9. Social Security (FICA)
10. Group life insurance
11. Unemployment compensation
12. Tuition reimbursement
13. Company automobile
14. Uniforms
15. Laundry allowance
16. Meal allowance
17. Mileage reimbursement
18. Physical examinations
19. Others

Some indirect cost benefits might include:

1. Payroll deductions
2. Parking space
3. Credit union facilities
4. Subsidized meals
5. Use of agency facilities, such as:
    a. Gymnasium
    b. Shop equipment
    c. Audio-visual equipment
6. Employee lounge
7. "Free" admission to agency activities, such as:
    a. Shows
    b. Recreation areas

The negotiator should keep in mind that some benefits have a double advantage for management. While some benefits which management may grant simply help management "trade off" unacceptable benefits at the bargaining table, others have the potential to increase production. For example:

1. Reimbursement for tuition for job-related educational courses will likely result in improved performance.
2. Extra salary recognition for related college degrees should similarly improve job performance.
3. Education leave can encourage employees to improve their knowledge and skills on the job.
4. Extra pay for extra work can get jobs done by competent employees.
5. Some early retirement plans can actually save the employer money.
6. Safety measures on the job site can reduce absences and company medical bills.
7. Merit pay and incentive pay can improve productivity.
8. Pay for work-through-breaks can provide needed services in an emergency.
9. "Free" classes after work, such as tuition reimbursement, can improve job performance.

A. Respond with Care

In responding to union proposals for benefits, here are the steps that should be followed:

1. Review the current labor contract for existing benefits

Assuming that the labor contract expires on a given date, one of two conditions will prevail, depending upon what law is governing collective bargaining. Either:

a. the contract expires and no contract provisions automatically continue, or

b. the contract expires, but all existing provisions continue until changed through negotiations or some other applicable procedure.

If all provisions of the labor contract can be terminated if there is no successor contract, then management is in a stronger position to consider deletion or modification of benefits currently included in the labor contract. In such a case, management should use the current labor contract as a negotiations tool for the next contract. For example, let us assume that the payment of the hospitalization premium is included in the current contract and the union wants to continue that provision. Let us further assume in this hypothetical example that the labor contract expires on June 30 unless there is a successor contract. In such a case, management might want to agree to continue paying the full hospitalization premium; but only under certain conditions. Although the union would likely expect that the premium payment would be continued automatically, that need not be the case. So, therefore, examine the current contracts for benefits which can be used in negotiations for the next contract.

2. Decide what new union proposals for benefits are negotiable

If any such proposals are prohibited topics, such as salaries for federal employees, management should state clearly from the outset that such topics will not be negotiated. If any benefit proposals are permissive, then management should decide which ones it wishes to negotiate on. By agreeing to negotiate on permissive topics, management should gain more bargaining leverage. After all, if management is being asked to negotiate on something that is not required, then some extra consideration should be given by the union. If the union benefit proposal is a mandatory topic of negotiations, then management has no choice but to negotiate. But remember, a rejection (with reason given) is a negotiations proposal.

3. Cost-out each benefit proposal

The subject of computing the cost of contract proposals is covered in detail in the book Bargaining Tactics. For the purposes here, suffice it to say that the financial and nonfinancial, direct and indirect costs should be identified for each benefit proposal. Without such important information there can be no successful negotiations.

4. Establish priorities for the benefit proposals

Some benefits are more valuable to management than others. Some benefits are more valuable to the union than are others. The ideal trade, of course, is for management to give a benefit which it finds very easy to give in return for something of great value that it wants. One man's garbage is another man's treasure! By establishing what it knows to be its own priorities, and by anticipating what it thinks are the union priorities, management has taken the first step to planning its strategy for negotiating benefits.

5. Establish your bargaining packages

As explained in Bargaining Tactics, and elsewhere in this work, most negotiations offers should be in the form of "packages." This usually means that related items under negotiations are tied together in the bargaining process. For example, all proposals concerning leaves might be considered at one time; with agreement on one leave being conditioned upon agreement on all leaves.

The union's proposal for improved benefits are useful to management in two major ways:

a. If a benefit can be granted or improved, it is done with the condition that certain other proposals be withdrawn. For example, management might agree to increase sick leave benefits with the requirement that all other leave proposals be withdrawn from the bargaining table.

b. A benefit can be granted by management with an agreement from the union that it will result with more and/or better work. For example, a salary improvement might be conditioned upon the acceptance of a shorter lunch period.

During the days of an expanding economy in the private sector, one purpose of collective bargaining was to decide how to apportion the "profits" of industry among the workers. Such a use of collective bargaining was workable during a period of expanding production. However, America's industrial production has now declined and there is little "profit" to distribute among the workers. This fact is also particularly applicable to the public sector, which does not operate under free enterprise procedures. As a consequence, increased benefits can be justified only if there is a corresponding increase in the quality or quantity of work performed. This means that the bargaining table must play a part in gaining improved productivity in the public sector.

B. Use Quid Pro Quo

Following are several examples from the author's experience where the granting of a benefit resulted in obtaining something that management wanted:

1. In one situation it was necessary for the government agency to reduce the number of employment positions by over 200. The union wanted to protect its members' job security, and management wanted some reasonable latitude in deciding which employees would be laid off. Through negotiations both parties got almost exactly what they wanted.
2. In another situation, a teachers' union wanted a salary increase. The increase was granted with the understanding that class sizes would be increased. (In this particular case, class size was a negotiable topic.)
3. In a third situation, the union wanted binding arbitration of grievances. Management wanted a narrower definition of grievances and a clarification of major portions of the language of the contract. Both parties got almost exactly what they wanted.
4. And in another case, management wanted to delete sabbatical leave from the contract and was able to do so by making a salary offer which it would have made anyway.

5. Finally, there was the case where the union wanted a minor increase in the sick leave program, and management wanted employees to have a physician's certificate under certain conditions. A deal was struck and both parties were happy.

An agency's benefit program can be made more useful in the bargaining process if it is given proper publicity among the employees. If the employees are made constantly aware of the benefits which they have, there is less chance that these benefits will be taken for granted at the bargaining table. To keep employees informed of their benefits, a number of techniques can be used, among which are:

1. An attractive brochure can be prepared which is annually distributed among employees. This brochure should list and explain the many benefits offered by the employer.
2. During the interview process, new employees can be presented with the entire benefits program.
3. If the agency is large enough, it can distribute periodic employee newsletters. In each newsletter some description of an employee benefit can be included.

XIV. HOW TO BREAK TEMPORARY DEADLOCKS

There were about 650 school districts in New York State in 1968, during the first year of the state's new collective bargaining law, the Taylor Law. During the first year of negotiations, some 600 school districts could not reach an agreement without invoking an impasse procedure. Naturally, the number of jurisdictions that reached an impasse each year thereafter declined steadily, but even today, a large number of school districts in New York State still experience an impasse in negotiations. The same is true of other governmental jurisdictions in that state and for public sector jurisdictions throughout the United States. Impasses that must be resolved through some formal impasse resolution procedure are very commonplace.

Even more commonplace are temporary impasses during the process of negotiations. While a permanent impasse takes place at the end of negotiations, when neither party is able to make any further movement, a temporary impasse occurs quite often during negotiations when the parties reach a deadlock for which there appears to be no immediate solution. If such temporary impasses are not resolved quickly, they can escalate into serious problems later on. When faced with these temporary stalemates, there are a number of tactics which can be employed in order to continue with negotiations. Following are some tactics which the author has used successfully in many different instances.

1. Use one-on-one negotiations

Elsewhere in this book the reader has been warned not to engage in negotiations which take place exclusively between the two chief spokesmen. A number of reasons were given for the inadvisability of such negotiations. Despite that advice, however, there are a few occasions when "one-on-one" negotiations may be justified.

One such occasion is in the event of a temporary deadlock. Sometimes such deadlocks have been contributed to by the presence of both teams, and the accompanying necessity to demonstrate toughness and determination. The author has found in a number of instances that a private meeting with the opposing negotiator can often bring about some understandings which could not be achieved at the bargaining table.

On rare occasions the author has allowed other team members to meet with individual members of the opposing team on a one-to-one basis. Although such a tactic should be used only in extremely serious situations, sometimes extreme problems call for extreme solutions.

2. Call a caucus

The caucus is a brief break in negotiations, when one or both teams need to remove themselves from the bargaining room for some legitimate reason. One very legitimate reason for taking a caucus is to allow both teams to review privately the cause of a temporary deadlock and to seek some productive solution. The caucus not only allows time free from the pressure of bargaining to evaluate the problem, but the caucus also allows a cooling-off period if emotions have heated up. However, if a caucus is taken for the purpose of seeking a solution to the deadlock, when the parties return they should both have some new proposal to alleviate the impasse.

3. We've come a long way, baby

As negotiations approach their end, some of the most difficult problems still lay ahead, as discussed in the section in this book which discusses methods of closure. Often near the end of negotiations the parties have a tendency to "freeze up" and become intransigent. There are many reasons for this. The parties have made many concessions. The parties are tired and the pressures are mounting.

One technique which might be tried to keep negotiations moving is to show graphically how many issues have been resolved, and how few issues remain. The appeal to the opponent should be: "We've come so far. It's a shame to lose it all so close to a contract." This statement, followed by some token good faith move, can serve to reopen the flow of agreements.

4. Show the futility of a deadlock

Actually, what good does a deadlock do? Eventually, the parties will come to an agreement, so why not go on with negotiations? Certainly, the absence of an agreement is not going to help the union. If the union thinks that a formal impasse procedure will cause management to make additional concessions, the management negotiator should make it clear that no concessions will be made in the impasse procedure that would not be made at the bargaining table. Every effort should be made to convince the union that an agreement reached at the bargaining table is preferable to an agreement "imposed" by a mediator of a fact-finding panel.

To discourage the union from using the impasse procedure as a weapon for negotiations, management should always keep itself in a bargaining position which, if submitted to impasse, would be just as risky for the union as for management. This technique can be ensured by always asking oneself: "What if we were to be at impasse at this stage of negotiations?" The answer to this question ideally should be: "Both parties will face an equal risk."

5. Form a temporary subcommittee

Some temporary negotiations disputes can be best resolved away from the bargaining table. Allowing different people to face each other in a different environment often opens new avenues of communications. This is where the ad hoc subcommittee might be the answer.

Some disputes require specialized study that can be performed best by a special committee of persons representing the union and of persons representing the employer. Such a special committee can give concentrated attention to a difficult issue in a less adversary relationship.

For example, let's hypothesize that negotiations have entered into a temporary deadlock over the definition of what constitutes personal leave. Since a debate on that topic might take an inordinate amount of time at the bargaining table, the parties might agree to appoint a special ad hoc committee to see if a tentative definition of personal leave could be arrived at. Naturally, any recommendations coming from such ad hock committees are purely advisory to the main negotiating teams. However, any such recommendations should be given serious consideration; otherwise, the value of such committees becomes questionable.

6. Change the subject

The longer the parties debate a disputed issue, the more fixed in their positions they appear to become. Should that be the case, one technique which can be used is to change the topic under consideration. Of course, tact should be used in changing subjects; otherwise, the tactic will be viewed as an attempt to avoid negotiations. There are several methods that can be used to tactfully change the subject. For example:

a. You can maintain that you need to collect more data and go on to other topics while the "data" are being collected.

b. You can state that you have a report on another topic which you would like to offer.

c. You can bring in a guest expert witness who is prepared to speak on a different topic.

By changing the topic and discussing other matters, emotions generated by the disputed topic have a chance to cool down, and the parties have the opportunity later to take a fresh look at the problem.

7. Recapitulate

Periodically, the parties will become mired in debate over one minor point in a complex proposal. To clear everyone's mind on the whole matter, a summarization of the issue is called for. This recapitulation often will renew the momentum of negotiations and the bothersome obstruction will disappear.

8. Offer alternatives

A deadlock in negotiations is more likely if there is only one solution available than if there are several solutions available. Let's assume that the union has asked to meet with employees on company time, which the employer finds unacceptable. Faced with that situation, the employer might suggest that the union could meet with employees during their lunch periods, rest periods, or immediately before or after work.

Although the alternatives offered by management may not be what the union wants, at least the offering of several alternatives shows good faith and provides the union with some choices.

9. Break off negotiations

In infrequent situations, either party may wish to abruptly break off negotiations on a given issue and leave the bargaining room with the suggestion that the parties contact each other later to establish another meeting date. By breaking off negotiations on a disputed item in this manner, the unacceptability of the issue is underscored. Although this tactic is rather drastic, and should be used only once (and only at the right time), it does provide a dramatic way to move on to other topics.

10. Change locations of meetings

On several occasions, temporary deadlocks in negotiations have been broken by simply changing the location of negotiations sessions and changing the normal time of meetings. Sometimes a Saturday morning meeting, with coffee, leisure clothes, and a different and more comfortable meeting room can provide a more relaxed atmosphere in which difficult issues gradually dissolve.

11. Get agreement in principle

Negotiations can be stymied by an inability to reach an agreement on some minor point subsumed under a broader issue. The author remembers one instance where the parties were deadlocked on the issue of binding arbitration of grievances, but the deadlock was not over the substantive issue of binding arbitration. The disagreement was over how to choose an arbitrator. In that particular situation, my opponent and I both agreed that whatever method was used, it had to involve mutual choice. It was further agreed that no final agreement would be entered into on the substantive issue of binding arbitration of grievances until the matter of how to choose the arbitrator was resolved. At that point, the issue was tabled with the understanding that there was an agreement in principle and that the details would be worked out later. As it turned out, the details were indeed worked out later and the contract was ratified.

12. Reclassify issues

As described elsewhere in this book, most negotiations offers should be made in a "package." That means that several items should be tied together with the understanding that no agreement will be reached on any one item until agreement is reached on all items in that package.

When a temporary impasse is reached on one of these "packages," the package can be broken apart, rearranged, or combined with another package, without really changing one's total overall position. For example, let's take a situation where the union is asking for an increase in wages, increased health care donation, and uniform allowance. Management makes an offer on all three which is unacceptable to the union and after considerable discussion a stalemate occurs, at which time management makes a new counterproposal to increase its salary offer. However, it offers no change in its last health care offer and deletes any offer on uniform allowance. The union accepts, even though the total cost to management for its last offer was no more than its previous offer.

Naturally, the case cited above is a simple one. Actually, the technique works better with more complicated package, but for purposes of brevity, this simple example should suffice.

13. Pose a hypothetical question

Any experienced negotiator knows that any offer carries with it the risk that it will be rejected as insufficient, or that it might be accepted when a lesser offer would have sufficed. Therefore, if possible, a negotiator should find out in advance if a planned offer will be accepted. But that's easier said than done. In some cases, however, especially where the opponent is not perceptive, tactful questions can produce needed answers.

Let's hypothesize that the union is strongly demanding that all grievances be resolved through binding arbitration; and while management is opposed to the demand, management would be willing to settle for advisory arbitration, but is hesitant to so indicate. One tactic which might be used is to pose certain questions like:

a. "What is it that you expect to gain from binding arbitration?"

b. "Isn't there some other solution to your proposal?"

c. "Is there any interest in advisory reviews of grievances?"

d. "Although I doubt that I could do it, suppose I could convince my employer to go along with advisory arbitration?"

Such questions are designed to gain information without an actual offer being made. Try it. The worst that can happen is that you will not get the information you are seeking.

14. Make a concession

The most obvious solution to a temporary deadlock is to make a concession. Elsewhere in this book the many ways to make a concession are discussed. The trick, however, is to make the least concession that will break the impasse. An excessive concession simply sets the stage for more rigid demands. In making a concession in order to break a stalemate, the negotiator should convey the message that the concession is difficult and is being made only to break the log jam so that negotiations can continue--with the expectation that one good turn deserves another.

15. Get a mediator

There is a popular belief that mediators only enter the negotiations scene when all negotiations have completely deadlocked. Frankly, such is the commonplace occurrence, but mediators can be used during negotiations. Several years ago, the Federal Mediation and Conciliation Service (FMCS) instituted a procedure of "preventative mediation." Under this procedure, the FMCS is notified at the beginning of negotiations, and a mediator is made available should the parties need his services during negotiations. The idea being that the continuing resolution of temporary impasses minimizes the chance of a permanent impasse at the end of negotiations. Under preventative mediation, the mediator may join negotiations sessions to become familiar with the issues and the parties. Some feel that the presence of the mediator is of advantage to both parties. Although the author has used this method (out of deference to an opponent), I find that competent negotiators can do better on their own.

In conclusion, all negotiations encounter some form of temporary deadlocks. They are to be expected as normal. But just as certainly as they appear, they will also disappear. The experienced negotiator knows this and does not become overly concerned when faced with a temporary deadlock.

XV. HOW TO COUNTER UNION TACTICS

Labor negotiations are not always a gentlemanly process of labor and management presenting their respective proposals and counterproposals, resulting in an attempt to achieve an amicable and mutual accommodation. Sometimes tactics are used other than persuasion through the presentation of facts. Sometimes tactics are employed to generate fear and discomfort in an effort to cause the opposing party to take action which otherwise might not be taken.

In dealing with pressure tactics, two fundamental rules should be noted:

1. Fear is used as a negotiations tactic in lieu of taking actual adverse action. Fear is a more useful tactic, in that it is often more effective than the actual act and is always less expensive than the actual act. For example, the threat of scattered use of sick leave is more likely to induce management to take action desired by the union than the actual implementation of scattered use of sick leave. Whereas the threat of scattered use of sick leaves conjures up all sorts of terrible consequences (the imagination does wonders when frightened), the actual use of scattered sick leave would likely be handled routinely by management. Certainly, the threat of such an act is less expensive to the union than the actual act itself.

2. Assuming a reasonable and fair position has been taken in negotiations, there should be no capitulation as the result of harmful acts or the threat of harmful acts. To capitulate under such conditions would teach the opponent that threats and hostile acts are a legitimate part of labor negotiations.

With these rules in mind, here are some of the pressure tactics used by unions and what can be done about them.

1. The use of end-runs

Occasionally, the spokesman for the union will attempt to negotiate with persons other than the counterpart on the management team. This tactic is usually used to force the management spokesman to make a concession which he would not make otherwise. Attempts to bypass the opposing negotiator are often referred to as "end-runs." In the public sector there are many end-runs which a union might attempt:

a. There are end-runs to the governing body. Such end-runs are usually accomplished by simultaneous communications to all members of the governing body, through the use of the mail service or telephone, or by representatives of the union appearing before an official meeting of the governing body. This approach is used to convince the governing body that it should instruct its negotiator to change his position. In such cases, the governing body should simply refer such matters back to the bargaining table, and then quietly investigate to determine if there should be a change in directions given to the negotiator.

b. There are end runs to individual members of the governing body. Usually, this occurs when the union has an ally on the governing body or where there is a "weak sister" on the governing council.

Such contacts are made in order to disunite the governing body, since a divided governing body can be manipulated more easily than one that is strongly united.

c. There are end-runs to the chief executive of the agency. Such contacts are made in order to undermine the support of management's chief negotiator. By instilling doubt in the mind of the chief executive, the first step has been taken to erode the strength of management's spokesman in labor relations. Although chief executives generally should refuse to speak with the union about negotiable topics, there are times when there may be no choice. In such situations, the chief executive (or superintendent of schools) should listen to the union and then discuss the matter privately with the management negotiator. However, the chief executive always should make it clear that the chief spokesman speaks for the agency.

d. End-runs are made to the specific clientele served by the agency. For example, public school teachers frequently attempt to contact parents during the process of negotiations in order to induce the parents to contact the school board. This tactic is designed to result in the school board advising the superintendent to give new directions to the negotiations through instructions to the chief negotiator. When such end-runs are used by the union, the governing body should attempt to make clear the fact that all negotiations take place between the authorized parties. If the situation warrants further action, however, the governing body should respond with appropriate counter measures.

e. There are end-runs to the public-at-large. These end-runs are designed to generate public support for a position taken by the union. To the extent possible, such actions should be prohibited by mutual agreement prior to the beginning of negotiations. Where this has not been the case, management should determine to what extent and in what fashion such public relations campaigns by the union should be countered.

f. There are end runs to specific members of the management team. For example, it is not uncommon for union members to attempt to influence their job supervisors during negotiations. To minimize any harm which might come from such potential acts, management should:

   (1) Inform all members of the management team that they are not to engage in conversation with employees on matters under negotiations, and

   (2) Have a prior understanding with the union that such tactics will not be engaged in.

2. Picketing

Frequently during negotiations or during a strike, members of the union will station themselves outside of the workplace, particularly the central workplace, and often carrying signs, to demonstrate, to protest, or to keep nonunion members from entering the workplace--and to generally intimidate management into taking some action desired by the union. Picketing is a common occurrence in collective bargaining, and should not cause overreaction. Although there are many forms of picketing and no one management response is appropriate, certain actions should be taken during picketing:

a. The police should be alerted that picketing is taking place, since picket lines can sometimes create disturbances and interfere with the rights of the public and nonpicketers.

b. The right of entry and egress to agency premises must be kept open and safe.

c. Management team members should not attempt to communicate with employees on the picket line regarding matters under negotiations.

d. Nonpicketing employees should be encouraged to have no contact with those on the picket line.

e. All illegal acts should be noted and reported to the appropriate authorities.

3. Slowdowns

A well-disciplined union is able to use the tactic of "escalated force" during negotiations. This is an orderly process of escalated threats and hostile acts until an objective is achieved. For example, many unions are hesitant to engage in a strike for many obvious reasons. Frequently, the use of lesser force is preferable, such as a concerted slow-down at the work site. Such a tactic is designed to intimidate and harm the employer while posing little threat or harm to the employees. In slow-downs, a wise union will usually advise its members as to how to lessen their work, but within agency permissible limits. In other words, employees are advised to "work to the rule," and no more. This tactic deprives the employer of vital services which employees regularly give beyond the actual requirement of the job, and causes confusion on the job. It is the union's hope that the tactic will result in management making a concession at the bargaining table. Incidentally, the opposite of a "slowdown" is a "speed-up." Police unions have made this tactic well-known by encouraging officers to issue as many traffic tickets as legally possible.

Although no one rule should be followed in responding to slowdowns, the following suggestions apply generally:

a. If the slowdown is not causing serious harm, it should be ignored.

b. If the slowdown is resulting in violation of agency rules, appropriate disciplinary actions should be taken.

c. If the slowdown is inflicting harm on the agency, but no violation of any rule has taken place, the agency should undertake appropriate negotiations and/or employee relations strategy to correct the situation.

4. Charges of unfair labor practices

In the experience of the author, most union allegations of unfair labor practices are only threats designed to intimidate the employer into making some concession. Even when such charges are actually filed, most of them are resolved before a hearing is held or an order is issued. And even when a hearing is held on a charge and a decision is made, management has a better than 50 percent change to win. But even if management loses the case, the worst solution is usually to stop something that management can afford to stop.

More about this topic is discussed in the section dealing with unfair labor practices. Therefore, for purposes of brevity, suffice it to suggest that certain points should be noted when faced with a charge of unfair labor practices:

a. The charge is usually only a threat, and should be dealt with as such.

b. Get expert advice from an attorney or competent consultant, if necessary.

c. If convinced that you are innocent, do not concede.

d. Find an unfair labor practice being committed by the union and charge the union with committing an unfair labor practice. If such an unfair practice cannot be found, get tough at the bargaining table.

e. If management does not want to negotiate on a certain issue and considers that issue a nonmandatory topic, management should refuse to bargain. If charged with an unfair labor practice, management should take its case to the appropriate reviewing body and give its best defense.

5. Walkouts

One of the many steps included in the use of "escalated force" is the "walkout." A walkout occurs when the union negotiations team abruptly exits from the negotiations room upon a prearranged signal. The tactic is used to imply to management that the union team is so irritated that it can no longer face the management team and must therefore terminate negotiations to find a more effective way to convince management to accept certain union demands. To the novice management team, the first such experience with a walkout usually leaves the management team stunned and disoriented, and therefore vulnerable to making unwise concessions.

Under normal circumstances a walkout is something to be tolerated. The best approach is to be sure that the union is informed prior to leaving the room that management is willing to remain for further discussion. The next day, or soon thereafter, the union should be communicated with by expressing a willingness to continue with negotiations. Sometimes a small "face-saving" gesture can be made to entice the union to return. For specific suggestions on how to deal with such a tactic, see the section which discusses how to deal with temporary deadlocks.

6. Marathon meetings

A popular but mythical view of labor negotiations envisions several twenty-four-hour meetings. Some unions do try to engage management in marathon meetings with the hope that fatigue will bring about an increased inclination of the management team to make concessions wanted by the union. The tactic does work occasionally, and management should be aware of the purpose of such marathon meetings.

The best way to avoid marathon meetings is to establish a mutually agreeable schedule of meetings of a specified duration, allowing sufficient time to conduct reasonable negotiations on all issues. Should a marathon meeting become necessary despite such planning, the management team should be aware of the pitfalls of such meetings and prepare accordingly. Should the management team find itself being pressured into trying to resolve an issue before it is ready, every effort should be made to table that issue until a later date. Should some immutable deadline be faced with insufficient time available to teach a total agreement free of intimidating pressure, it might be better for the unresolved issues to be dealt with through an appropriate impasse procedure.

7. Frequent meetings

One tactic employed by unions involves engaging management in frequent negotiations sessions far in excess of what good faith bargaining would call for. The purpose of engaging management in an excess number of meetings is to create a psychological attitude on the part of management team members which makes them vulnerable to allowing concessions sought by the union. Frequent and prolonged meetings can tire participants, weakening their will to resist tempting concessions, and causing a general disorientation which can lead to errors in judgment at the bargaining table.

8. Temper tantrums

Eventually, each negotiator will encounter a negotiations session where the opposing spokesman displays excessive temper. Although such displays are sometimes a sincere expression of frustration, often they are a rehearsed demonstration designed to frighten the opposing team into making a concession. Such temper tantrums indicate to the opponent that unless the desired concession is made, management will have to suffer with a hostile team at the bargaining table. There are various ways to handle such antics at the bargaining table, and they are discussed elsewhere in this book.

9. Espionage

Negotiations routinely require that the negotiator not reveal certain information to the opponent. For example, no competent negotiator would announce at the outset of negotiations the maximum salary that will be agreed to. That fact is reserved for a final offer which hopefully wraps up an entire labor contract.

Although there are proper and ethical ways to obtain such information through the bargaining process, there are cases on record where the parties have engaged in outright espionage. Here are some points to consider in protecting the confidentiality of negotiations:

a. All negotiations notes and documents of all team members should be kept under security. This means, among other things, that negotiations notes should not be left in the negotiations room, nor should vital notes be discarded in the trash. Where they might be picked up by members of the opposing team.

b. Telephone conversations regarding negotiations should be carefully guarded.

c. Only designated persons (the chief spokesman, the chief executive, the governing body, etc.) should know the final settlement point on each issue.

d. All persons having contact with management's position on matters under negotiations, including secretaries, should be admonished not to discuss anything regarding negotiations with other staff members.

Despite good efforts, however, "leaks" in confidentiality do occur. When there is evidence of such breaches, every effort should be made to identify the source, and in the meantime, the circle of confidantes should be narrowed. Most breaches in confidentiality occur in one of three places--the governing body, the chief executive, or a member of the negotiating team. In most cases, such breaks are unintentional, but in some cases they are intentional. Usually, the negotiating team can be controlled, and if there is a disloyal member, that person can usually be identified through certain measures. Seldom is the chief executive involved in releasing confidential information, but it has been known to happen.

Surprisingly, most intentional breaches of confidentiality originate within the governing body. Usually, the motive for such unethical actions seems to be political in nature. In such cases the member of the governing body releases confidential information to the union in order to curry favor with the union, and thus gain the votes of the public employees through union endorsements.

When there is a leak on the governing body, there are several ways to finesse it:

a. Get all instructions from the governing body by individual communications.

b. Have all negotiations communications go to a committee of the governing body.

c. Have the governing body authorize the chief executive to give overall directions to negotiations.

d. Have the governing body give very broad guidelines to the chief negotiator.

10. Consortium bargaining

Beginning around 1970, the Michigan Education Association, the state's organization of public school teachers, helped several local school districts to join together into one coordinated bargaining coalition. Although each local school district still bargained separately, the local teacher associations in those districts met regularly together to play overall negotiations strategies. Since then, this approach to bargaining by public sector unions has spread to other areas.

Under the Michigan approach, locals within a county elect representatives to a Multi-Area Bargaining Organization (MABO), which then becomes the exclusive bargaining agent for all locals. By 1981, there were at least thirty-three MABOs in Michigan.

In response to consortium bargaining by unions, a number of governmental agencies, particularly school boards, have joined together on an informal basis to share their experiences and establish certain informal "guidelines" for negotiations. The author has been involved in the establishment of several such organizations (in two cases on a state-wide basis), and has found them to be extremely effective.

11. Media events

One of the many techniques employed by organized public employees to strengthen their position at the bargaining table is to get the public's attention through use of the media, using both paid announcements and press releases. This technique should be neutralized, if possible, by prior agreement that no press releases will be made during negotiations, except by mutual agreement. If that is not possible, then each use of the media by the union must be evaluated on its individual merits and responded to accordingly.

12. Other pressure tactics

Remember, all pressure tactics are designed to cause the opposing team to take action (or to stop taking action) which it would not take if not for the pressure tactics. This is an important rule to remember, because if you can stand the pressure, no concession need be made. Also, keep in mind that employees have more to gain under peace than under warfare. In other words, there is a limit beyond which union militancy becomes unproductive.

Some of the other pressure tactics employed by unions are:

a. Hot lines. "Hot lines" are special telephone numbers established by the union in order to receive communications from employees and the citizens who may have information to communicate to the union.

b. Demonstrations and mass meetings. Mass gatherings of employees are a step in the planned escalation of tensions. Mass gatherings of employees conjure up in the minds of management the nightmare of hoardes of crazed employees descending upon supervisors. Such meetings provide good press for the media, but usually have limited impact in the long run. Such meetings are also designed to unite the forces, but sometimes serve to divide the rank and file.

c. Artificial deadlines. Unions will occasionally try to impose some deadline by which management must take certain action, "or else." The "or else" is usually a threat to have a mass meeting, or a threat to take a vote to censure management, or some similar threat. Such deadlines are usually artificial, and are one more step in the escalation of tensions.

A. Other Tactics to Watch

The tactics listed above are signs of a hostile opponent. There are other tactics, however, employed at the bargaining table which are less aggressive, but nevertheless should be watched for. Here are some examples:

1. "You can afford it"

Frequently, a union spokesman will attempt to engage the management team in discussion over whether or not the employer can afford to grant certain compensable benefits. Sometimes such attempts are based on naiveté, while often such attempts are premeditated. In either case, such efforts should be resisted. Certainly, the union would be offended if the employer suggested that employees should take a pay cut because "they could afford it." To such an allegation, the union would understandably reply: "That's none of your business!" Similarly, it is the function of management to determine what can be afforded. That is not a negotiable topic. In no public sector bargaining law that the author is familiar with is "affordability" listed as a mandatory topic of bargaining.

In the private sector, when the employer states that a union proposal must be rejected because the employer "cannot afford it," the union has a right to have the company books made available to the union. Naturally, this is the last thing that an employer would want to do. By the same token, when a public employer states that it "cannot afford" a union demand, the employer is making "affordability" negotiable, the result of which should be obvious. For example, under such conditions, affordability would be subject to review in the impasse procedure.

Discussions on affordability should be avoided in almost all instances simply because there is practically no way to win such arguments. Affordability is not a fixed amount of money that everybody will agree to. Affordability in the public sector is largely a political decision based upon priorities. A public agency can always afford to give the union more, by rearranging its priorities and taking money from another part of the agency's operation. The clear warning, therefore, is do not discuss affordability.

From the employer's point of view, affordability is always a consideration, but there are numerous ways to express this at the bargaining table without actually stating that the union proposal cannot be afforded. For example, the employer can say:

a. "We have decided to allot only a certain portion of our budget to this area of employee benefits."

b. "The employer has many demands on its limited budget, so therefore we will not agree to your proposal."

c. "Our funds have been used up by other budget demands, and we have no funds for your proposal."

2. "Give us your rationale"

Whenever a rejection is made of an offer, the person making the offer is entitled to reasons. In giving the reasons for rejection, it should be kept in mind that the opponent will attempt to neutralize, or counter, those reasons. Therefore, caution should be used in responding to the demand: "Give us your rationale." In presenting one's rationale, care should be taken that the reasons for rejection are sound; otherwise, they will be quickly undermined by the opposing negotiator.

Another reason for using this technique in negotiations is to trap management into discussing issues which are nonnegotiable. By engaging management in such discussions, it is likely that the nonnegotiable topic will become negotiable.

3. Concept bargaining

Some unions make an initial presentation at the bargaining table in terms of very broad proposals. For example, its demands might be stated like this:

a. An improved salary scale

b. Increased payment in hospitalization payments

c. More holidays

You will note a serious lack of specificity in such a list. This approach is referred to as "concept bargaining," and should be dealt with carefully. One of the purposes of concept bargaining is to draw from management its position on major areas of bargaining before the union actually makes any actual offer.

4. Bargaining from a false premise

Some negotiations proposals are made on the assumption that their fulfillment will result in a better situation. This tactic is referred to as "bargaining from a false premise," and here are some examples.

a. A lounge for the employees will improve morale and productivity.

b. Fewer students in the classroom make better education.

c. Free physical examinations for employees will save the employer money.

d. Employees work better when they are "involved" in decisions which affect them.

A list of similar false premises could be quite long, if one thinks back over the type of proposals made at the bargaining table. The use of bargaining from a false premise is generally a very effective technique because management automatically assumes that the proposal in theory is good, and the only obstacle is insufficient funds. At that point, the only question is how much management will spend on the proposal.

5. Comparability

Many union proposals are accompanied by charts and graphs showing how other government jurisdictions do better. For example, a policemen's union will often show how other jurisdictions pay better salaries. School teachers will attempt to show how other school districts pay their teachers better. The objective of such comparison, apparently, is to shame the employer into paying better salaries. However, there are generally two weaknesses found in this tactic:

a. Quite often the other jurisdictions chosen have been chosen carefully on the basis that they pay more.

b. No two government districts or agencies are exactly comparable.

Even if comparability determination were possible, wages are not necessarily a function of such comparability. Wages are determined by what the employer is able to afford, and what wage the employer is willing to pay in order to attract, retain, and promote the type of employees the employer wants.

6. The wounds of virtue

Most government bureaucrats and politicians are well-intentioned. They want to do the "right thing." Therefore, in response to the question: "Don't you want to help your employees?", the typical manager is likely to respond: "Yes," since he is fearful that any other response would indicate that he doesn't want "to do the right thing." It is amazing how frequently this tactic works. However, upon prudent consideration, it should be clear that the response to the question: "Don't you want to help your employees?" should be phrased tactfully. For example, the response could be:

a. "I don't understand what you mean."

b. "What specifically are you proposing?"

c. "We always have the welfare of our employees uppermost in our minds."

When operating at its best, this tactic takes a union proposal and turns it into a guilt burden for the employer. The best rule to follow to avoid this trap is to ask the following silent question before responding to each proposal: "Is the premise of this question valid?"

B. Conclusion

In summary, the labor negotiator always assumes that there is a reason for every statement and every move of the adversary. The experienced negotiator learns to study these statements and moves before responding. The experienced negotiator also knows that each threatening tactic of the opponent is done in order to obtain a benefit which would not otherwise be available. The experienced negotiator also knows that patience, skill, and good faith bargaining will normally conquer such tactics.

XVI. HOW TO HANDLE CHARGES OF UNFAIR LABOR PRACTICES

In a recent case in Rhode Island, the state's Labor Relations Board ruled that the University of Rhode Island changed pay grades, positions, and titles of some university employees without negotiating with the collective bargaining representatives.[1] This ruling was just one of hundreds of similar rulings on charges of unfair labor practices (ULP) rendered by state labor boards throughout the nation.

What is an unfair labor practice? Although what constitutes an unfair labor practice varies from state to state (and under Federal Executive Order 11491), generally speaking, a charge of an unfair labor practice is an allegation by either management or the union that the other has failed to follow the requirements of the applicable bargaining law with regard to required bargaining procedures.

For the most part, all public sector bargaining laws assure public employees certain substantive protections which are:

1. Public employees have the right to organize.
2. Management may not dominate, support, or otherwise interfere with the internal affairs of the union.
3. The employer may not refuse to bargain.

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[1] Rhode Island State Labor Relations Board and State of Rhode Island, University of Rhode Island, Rhode Island State Labor Relations Board, Case No. ULP-3538, October 16, 1980.

Some state bargaining laws make no specific reference to ULPs, while others specify what acts of commission or omission constitute ULPs. Therefore, before taking a firm position on ULPs, the party taking the action should review the matter with an attorney or competent consultant. If a charge is filed, the respondent should similarly seek expert help before taking a fixed position.

Normally, ULPs are lodged exclusively by unions, since the nature of collective bargaining makes the allegation of ULPs more advantageous to the union than to the employer. Some employers are so ignorant of ULPs that the mere threat of being charged with a ULP causes the employer to make unreasonable concessions. This is not to suggest that employers should ignore allegations of ULPs. There are bargaining practices which are illegal. Here are some that should be avoided in most situations:

1. Do not make any threats of reprisals because employees join or support a union or express interest in a union. This rule even applies in states where there is no collective bargaining law. About the only instance in which employees may be treated adversely for union activities is when such activities interfere with the normal operations of the agency. But even then, one should seek expert counsel before taking actions against employees for organizational activities.
2. Do not provide or promise benefits contingent upon the outcome of a representative election or other action related to the union. In most states, public employees may freely organize and they are generally protected from any overt pressure from management to discourage such actions.

3. Do not interrogate employees (or applicants) about their union attitudes. The feelings that employees may have about unions is a private matter and not an issue to be questioned by the employer. The right to assembly is a right of every citizen, and it should be treated as such.
4. Do not spy on union activities. Elsewhere in this book mention is made of the fact that industrial and labor espionage does take place. There have been many true stories reported in the press which describe how managerial personnel were caught eavesdropping on the union. Suffice it to say there is no legitimate excuse for such behavior.
5. Do not give preferential treatment to those who oppose the union. Do not punish those who support the union. Public employees have a right to assemble and organize free of influence from the employer.
6. Do not threaten to discontinue or contract out certain parts the agency's work should the employees unionize, or should the union act in a manner unacceptable to the employer. For example, do not threaten school bus drivers that school transportation will be contracted out if the drivers join a union. Or, do not threaten custodians with contracting out, if their union is objectionable to the employer.
7. Do not prohibit union solicitation or discussion after or before working hours, during breaks, and during lunch periods. Employees are generally free for such activities when on their own time, unless there is interference with the normal operation of the agency.

8. Do not prohibit the distribution of union literature in non-work sites, such as the employee lounge. Employees generally have the right to communicate about the union.

9. Do not treat union solicitation any differently than you would solicitations from other causes, such as charity. Do not single out the union and treat it more adversely than other organizations.

10. Do not lie about current employee benefits in an attempt to convince employees to remain nonunion. Again, public employees are protected in their right to assembly without interference from the public employer.

11. Do not use the supervisory staff authority to get information from the employees about the union. Such actions are a form of intimidation interpreted by many state labor boards as interference with the right to organize.

12. Do not distribute inflammatory anti-union literature to employees. Although there can be room to debate just what constitutes "inflammatory literature," the best rule to follow is not to distribute literature which is overtly hostile to the union.

Should an employer wish to wage an anti-union campaign--which is the employer's legal right if the campaign is conducted properly--an expert consultant should be retained by the agency. The issue of what an employer can do and cannot do with regard to fighting a union varies from state to state. Additionally, the proper expert has probably had experience in waging anti-union campaigns and should therefore be able to lend valuable assistance.

At this point the reader may conclude that nothing is allowed that displeases the union. This conclusion is not correct. Management can take many actions which the union may not approve of. For example:

1. You may verbally state and distribute literature regarding your views, if you don't violate any of the "don'ts" above. An employer has a general right to objectively discuss union affairs as they relate to the operation of the agency.
2. You may address employees on agency property and agency time, if none of the "don'ts" listed above are violated. Naturally, employees must be paid for attending such addresses.
3. You may counter the union's promise that it will guarantee job security, if the union makes such a claim. You can make it clear that only the employer can guarantee job security.
4. You may compare benefits between union shops and nonunion shops, but be sure your facts are accurate.
5. You may describe convincingly the many benefits that public employees have and what might be the impact of unionization, but you must be careful to be accurate and honest.
6. You may ask the union to describe exactly what it will provide to the employees which the employees do not now have and could not reasonably expect to have without a union.
7. You may describe how the union benefits from organizing employees.
8. You may discuss what happens when some employees join the union and some don't. You may ask the union to state its views regarding "free riders."

9. You may make it abundantly clear that no one can be required to join the union, unless the employer agrees. You may further define what "union security" really means, i.e., forced union membership. If the union refers to nonunion members as "free riders," you may refer to those forced to join the union as "captive passengers."

10. You may itemize the costs of unionization, e.g., dues, initiation fees, service fees, fines, etc.

11. You may discuss how a labor contract might interfere with the right of management to award bonuses and other special rewards for deserving employees.

12. You can describe how some agencies have turned to contracting out after unionization.

13. You may ask the union to describe exactly what benefits it will give to employees. You may explain that only the employer can give wages and benefits for work performed; that only the employer can finally set working conditions.

14. You may show that unions sometimes use threats and other acts of coercion to get their way. You may explain your right to deprive employees of benefits should a strike occur. If the union claims to offer strike benefits, make the union prove it has the funds and will use the funds. Ask the union to explain where these funds come from. You may offer statistics which show that salaries and benefits lost during strikes are never regained. You may state your legal right to replace strikers with persons willing to work. You may ask the

employees how they expect to live without an income during a strike. You may describe how unions treat employees who attempt to work during a strike.

15. You may explain that if a representation election is to be held that is secret; that no matter what the employee may have said or committed himself to with the union, he can freely exercise his vote in complete confidence. In other words, the employee can change his mind and no one will ever know.

16. You may employ an expert to assist you in your treatment of union organization matters.

In summary, there are many legal actions which a public employer may take during efforts to organize a union, and there are many freedoms left to the employer even if a union should become recognized. There are approximately 70,000 public sector government agencies in America, including school districts, counties, cities, state governments, and special districts. In theory, most of these could be organized for collective bargaining. In fact, however, at the beginning of the 1980s only about 15,000 government agencies were formally engaged in collective bargaining. And, in the author's opinion, too many of the 15,000 agencies engaged in collective bargaining today are doing so because they took no effort whatsoever to remain free to a union. In most cases these districts just assumed that the recognition of a union was inevitable. Such an attitude was a mistake. Had these districts taken advantage of their legal rights to oppose the unions, many of these districts would be union-free today.

If your agency should be charged with an unfair labor practice, here are some suggestions based upon experience with dealing with such matters:

1. Most ULPs are lodged solely as a threat to cause management to make a concession that it otherwise would not make. As explained to the reader earlier, the threat is usually more effective than the act itself.
2. In most cases management has at least an equal chance to win a case of an ULP. Therefore, both parties face the same risk of losing.
3. Even if management should lose, the remedy is usually simply to cease and desist from the act which management thought it had the right to perform. Naturally, a loss can give a boost of support for the union and make the governing body look bad in the media. But frankly, a well-counseled agency should not lose an ULP.
4. If the union seems committed to bringing charges of an ULP despite management's good faith bargaining efforts, management should observe the union's labor and negotiations activities carefully and catch it in a clear ULP and bring similar charges. The advantages of this tactic are evident.
5. Practically all states have a record someplace of all of the ULPs reviewed. When faced with an ULP, it is wise to review these cases for applicable precedents. If no applicable precedent exists in your state, you may wish to review similar ULPs in other states to determine the rationale for their disposition.

XVII. HOW TO HANDLE CLOSURE

Closing negotiations and wrapping up the contract comprise the most difficult period in negotiations for a number of reasons:

1. The parties are usually tired and less able mentally and physically to perform well.
2. Because of their weakened state, the parties are likely to agree to proposals which they should not agree to.
3. The most difficult issues are usually the only ones left at the end of negotiations.
4. As negotiations approach an end, both parties have less room to maneuver.
5. As negotiations reach their conclusion, there is usually a deadline which must be met to conclude negotiations. This deadline forces the parties to move more quickly than is safe.

Over many years of experience the author has compiled a list of tactics that can be used to help avoid serious problems at closure.

1. When you have an acceptable offer, don't "sleep on it"; take it. Although during all other occasions, except at closure, you should sleep on a proposal, that's not wise during closure. The best advice is to move quickly; get the agreement; write it up; get it initialed, stop talking; shake hands, say "good night"; and then leave the room.

2. Summarize agreed-upon points throughout negotiations to avoid dangerous misrecapitulations at the end of negotiations. Closure ideally should be reserved as for simple pro forma details.
3. Do not reopen negotiations on issues which have been settled. As a matter of fact, do not even discuss settled issues during negotiations or after negotiations. Such discussion cannot improve the issue and such discussions may create problems.
4. Do not oversell your closure. You should use the minimum amount of persuasion necessary to get an agreement. Don't make any speeches, and do not continue a debate longer than necessary.
5. Do not annihilate your opponent. Try not to allow your opponent to get into a position where a closure will spell defeat for him. No matter how tempted you are to take advantage of a weakend opponent at closure, don't do it. Power balances shift constantly. Not only do you not want to ruin closure on the present contract, but you don't want an enemy to confront in the future.
6. Prepare language ready for signing. When you think you have the exact language that will bring about closure, type it up quickly, duplicate it, and present it to your colleague for immediate signature. At this stage there should be no loose ends in the wrap-up language.

7. When your final language is presented, couch your language to indicate that agreement is assumed. Don't say: "Is this what you wanted?" Rather, you should say: "Here is what we agreed to, so you can initial it."
8. Just before writing the final copy, summarize verbally what has been agreed to. You do this yourself, not your opponent, since you want control over the writing of the final language.
9. Be sure you have the authority to make the final plunge. Closure is no time to discover that you are not certain that you can agree to a wrap-up offer. If caught in such an emergency, you should have previously arranged for a way to communicate quickly with your employer in order to get needed direction immediately.
10. When you "feel" the opponent is ready to conclude negotiations, indicate that no better offer will be forthcoming. This will discourage any further attempts to negotiate.
11. If more discouragement is needed, indicate that the governing body will offer no more and that you will not even have further contact with the governing body. This is an alternative way to give an ultimatum, so you want to be sure that it works.
12. Show how the offer is superior to that in other jurisdictions. Stress the advantages and do not mention the disadvantages.
13. Give a sweetener to the union team members. Have you ever noticed when you make a serious salary proposal how the union team members first look to see how the offer will affect them

personally? Closure is sometimes assured if the last offer holds something special for the union and its negotiating team members. I remember one occasion when settlement came because I had purposely kept from granting time off for union business until the last negotiations session. That final offer closed negotiations.

14. Explain to the union why settlement now is better than having an impasse. Explain that an impasse will:
    a. Cost money
    b. Take valuable time
    c. Inject more uncertainty, and
    d. Polarize the parties

15. Hold a good offer until closure. Don't run out of steam at the last meeting. A good negotiator has always saved something to give. That little savings can be very helpful at the last session.

16. The best closure is when the opponent makes a final offer on the last remaining issue(s) which is in your "ballpark." When that happens, you have a contract. For example, when you have offered a 9 percent salary increase and are willing to settle for 10 percent, and the union makes a final offer of 10 percent, take it!

17. Remind the union that the budget deadline is approaching, and that unless settlement is reached there will be less chance for the union to influence the final budget.

18. In public agencies where employees receive annual contracts (public school districts, for example), the union can be reminded that contracts will be issued soon. This generates pressure on the union to conclude negotiations to avoid being finessed.

19. If negotiations continue until near the expiration of the current contract subtly remind the union that the expiration of the contract will have an unknown impact on current benefits and working conditions.

20. Try not to leave all of the difficult issues until closure. Attempt to plan your negotiations moves so that the tough items are settled prior to the last session. This tactic will make closure less difficult and more enjoyable.

By following the suggestions discussed in this section, hopefully you can avoid some of the catastrophes which other negotiators have experienced as they tried to conclude negotiations.

XVIII. HOW TO USE POWER

Negotiations power is the ability to cause your opponent to take actions which you want.

Repeat: Negotiations power is the ability to cause your opponent to take actions which you want.

There are many aspects to power. Some are direct; some are indirect. Some are overt; some are subtle. Any act which causes your opponent to do something you want is a form of power.

Most people have more power than they realize, but before any power can be used, there must be a will to use it. And, if one has the will to use power, that power must be directed toward some objective, and the power exercised should be appropriate to the occasion. Therefore, the rule of power in negotiations is: Use the least amount of power possible to achieve your objective.

There are many forms of power which can be used in negotations. Here are some of them.:

1. Power is knowing what your opponent needs

Don't assume that your adversary necessarily knows exactly what the employees want. Often union demands come directly from the ranks and the chief spokesman may not fully understand what the employees are asking for. Furthermore, a good management supervisory staff should know more about what the employees want than does the union.

By knowing the needs and wishes of the employees better than the union, management has gained a bargaining advantage. By way of example, suppose that management knows that it can get a wage settlement for 8 percent, but the union is bluffing for 10 percent. If management is correct, it should be able to get a settlement for 8 percent; whereas, if management has no idea of what the employees will settle for, it is much more subject to the power of the union at the bargaining table.

The author has experienced numerous occasions when he knew more of what the employees were actually asking for than the union spokesman. For example, in one situation that can be recalled, the union had proposed that employees be given copies of all materials placed in their personnel jackets after a given date. With the assistance of the personnel director, I was convinced that the vast majority of employees did not want this information and those who did would not hold out for this demand when it actually came to contract ratification. The union spokesman, however, who was not well-informed, worked himself into a rather rigid position and persevered. As it turned out, we were correct and the issue was finally dropped altogether. However, unbeknownst to the union, management would have been willing to settle for allowing employees to view their folders upon reasonable request.

2. Power balances change

The power balance between the negotiating parties is not fixed permanently. As circumstances change in the public agency, and as the marketplace changes, the relative power of the negotiating parties can change. Management should never assume that just because it backed the union down on one occasion and got a favorable contract, that management will have the same experience forever after. The power of the employer is based upon a number of factors, and the power of the union is based upon a number of factors. For example, a political change in the governing body of the agency can change the power of the employers. Similarly, a change in the chief spokesman of the union can change the power of the union.

3. Power is the willingness to take risks--especially if you win

There is a direct relationship between risk-taking and achievement. One of the major problems of society generally, in the view of the author, is that citizens have turned to government as a protector against risks. In order to protect the people against risks, the government, at all levels, has taken accountability away from the individual citizen and placed it on "society." As this process spreads, there is less chance (and need) to take risks. As fewer risks are taken, progress slows.

If the negotiator is to achieve his negotiations objectives, he must be willing to take some risks. The negotiator must be willing to make an offer or a counter-offer which might be more than was necessary, or the offer might be insufficient to satisfy the opponent. Since the whole process of negotiations involves two parties searching for the unknown (the final contract), every offer is made with no certain knowledge as to the impact that it will have on the opposing team and the final outcome of negotiations. An unwillingness to take any risks simply makes negotiations impossible.

The very fundamental requirement of good faith bargaining demands that risks be taken. Another fundamental requirement of all labor negotiations is that the parties must meet at reasonable times and places to discuss negotiable matters in an effort to reach an agreement. True, there is no collective bargaining law that legally requires that either party make a concession. Implicit in all bargaining laws, however, is the expectation that without concessions there can be no negotiations.

4. Power need not be applied to be effective

As stated elsewhere in this book, the threat of a strike can be more effective than the strike itself. Similarly, the threat to use power can sometimes be more effective than the actual use of the power. The threat to use power need not be blatant. As a matter of fact, a blatant threat to use power may force the opponent to take the action you are trying to stop. In many situations, therefore, a subtle and implied threat to use power may be more effective than the obtrusive threat.

The best rule to follow in the use of power is not to use power unless it is necessary. Every employer knows that a union is capable under the right conditions of carrying out a labor strike. Except under extreme conditions, there is no need for the union to state its power, to threaten to use this power, or to actually use the power. By the same token, every employee and union recognizes the broad power of management to direct the workforce. There is no need for management to remind the union of who the boss is, or to threaten to punish employees.

5. **Power is always finite**

The unions have their power and public employers have their power, but both have definite limits to their powers. The power of the union to cause management to do as the union wishes is limited. For example, a union of nurses in a public hospital cannot generate sufficient power to select which physicians shall serve on the staff of the hospital. Similarly, the hospital management cannot generate enough power to make nurses regularly perform the work of orderlies. The point being made here is that each party is limited in its power to cause the other to take a desired action. Knowing what is the opponent's power limit is power. By knowing the power of the union, management can avoid making excessive concessions through miscalculation or under the stress of unfounded fear.

6. **Power is persistence**

When the union refuses to withdraw a demand, or to modify it, and persists in its position, management is likely to search for some way to satisfy the union. By the same token, management's persistent rejection of a union demand will usually cause the union to gradually modify its position. Interestingly, when persistence is practiced by the union, management calls the union intransigent and pig-headed; whereas, when management practices persistence, management views itself as a righteous protector of the taxpayer. Nevertheless, the fact is that persistence at the bargaining table is another effective form of power.

7. Power is power perceived

As stated earlier, power is the ability to cause someone to take action you want. When one takes action as the result of implied or threatened use of power, the action is taken based upon perceived power and not necessarily actual power. Perceived power is a point on a continuum between doubt and certainty. The negotiator views the opponent and draws a conclusion which likely overestimates or underestimates the power of the opponent. Furthermore, power is determined by how one's will to use power is perceived. Everybody knows that an employer possesses broad powers to make employees do things they may not wish to do. The effectiveness of the power of the employer is somewhat determined by the employees' opinion of the will of the employer to use its power to cause employees to take actions disagreeable to them.

The significant challenge in perceived power is how to create the image of real power, even though it may not be present. By following the many suggestions in this book, as well as those in Bargaining Tactics, the negotiator will automatically enhance his perceived power.

8. Power is limited by the opponent's resistance

In theory, a governing body of a government agency has the power to direct the work force (within the limits of law and the labor contract). However, that theory is only as sound as the reasonbleness of the employer and the resistance of the union. In theory, a city council may have the authority to require that all employees live within the city, but it may lack the power to enforce such a requirement if the union and the employees sufficiently resist it. In this instance, the city's power is determined by the ability of the union to resist.

This rule is applicable to labor relations generally. The successful use of power is influenced by the reasonableness of the use of power and the ability of the union to resist that use of power.

9. The use of power entails risks

The whole process of negotiations involves a search for the unknown--the unknown being the final labor contract. Each move by each party is made without knowing what impact that move will have on the opponent or the outcome of the final contract. Each offer that is made involves the use of words, and words contain a host of meanings and interpretations. As a matter of fact, the labor contract itself is a risk. After all, a labor contract is written to be applied to the future, and no one can predict the future. There is no accurate way to anticipate how a labor contract written at one point in time will be applied under changed circumstances two or three years later.

For example, if the Cost of Living Index increased last year by 10 percent, how does one write a labor contract to cover salaries in the future? Will the Index go up or down? No matter what salary is agreed to, there is a risk for both parties. But, a salary must be decided upon. There is no choice about that. This same principle is applicable to some degree to all items being negotiated at the bargaining table. If a negotiator is unwilling to take risks, there will likely be no labor contract.

10. Power is in symbols

The gavel, the sheriff's badge, the judge's robe, military rank titles, all have one commonality--they are symbols of power. The gavel, the badge, the robe, and the title have no intrinsic power. They are all symbolic of power. As we discussed earlier in this chapter, power is power perceived; therefore, anything that can enhance perceived power through the use of symbols is to the advantage of the negotiator.

Here are some ways to convey the impression of power, authority, and respect:

a. Proper business attire can create a certain air of authority and power. Although the negotiator should avoid overdressing, he should certainly avoid careless dress and clothes which are distracting.

b. The title and rank of the negotiator can be a factor in the perception of power. "Assistant to the Mayor" is more indicative of power than "Coordinator of Employee Relations." Associate Superintendent" is more impressive than "Supervisor." Related to the person's title is the location of the position on the agency's organizational chart. A negotiator who reports directly to the governing body or the chief executive probably has more power than a negotiator who reports to the personnel director.

c. A large well-furnished office implies more power than a small ill-furnished office. An office next to the chief executive's office is more impressive than an office in the basement. An office with a private bathroom conveys more power than one which shares a bathroom with rank-and-file employees.

d. If a negotiator has a reputation for being able to exercise power effectively, that alone will do more good for the negotiator's power image than anything else. The way one develops such a reputation is to follow the advice given in this book, as well as the advice contained in Bargaining Tactics.

11. Power is relative

Power is only as strong as its ability to induce the opponent to take the action which you desire to be taken. An average negotiator dealing with a weak negotiator is a strong negotiator. On the other hand, an average negotiator dealing with a strong negotiator is a weak negotiator. Therefore, when inventorying one's power arsenal, it must be evaluated in terms of the opponent's power base.

12. Power is the ability to inflict pain and to withhold rewards

Although neither party at the bargaining table should attempt to seek benefits through hurting the other, the reality of negotiations is that harmful acts do occasionally take place in the name of "justice." But just as power is the ability to cause discomfort to an opponent, so is the ability to withhold pleasure and reward an expression of power. Remember how your allowance was withheld when you didn't behave as a child? To a child, such a withholding is a sure sign of parental power.

The union has little to give its members in contrast to management's power to give. The union cannot pay the employees, the union cannot give employees a holiday, and the union cannot promote employees. Only management can provide these rewards, and the refusal to grant such rewards is a clear exercise of power. So every time you refuse to grant a benefit requested by the union, you are exercising your power.

13. Power is knowledge

Not only should the effective negotiator be an expert technician, ideally he should be knowledgeable both generally and specifically in the subjects under negotiations. To gain such knowledge, the negotiator should engage in in-service training related to negotiations. He should be a student in his field of labor relations, and he should engage in a wide range of readings when possible.

14. Power is in aspiration

Negotiators who have high aspirations in negotiations achieve more than those who have low aspirations. This has been proven in a number of experiments. A union that aspires to a 5 percent salary increase will not get 6 percent. If that same union would aspire to get 10 percent, it might get 6 percent.

A management negotiator who has no goals in negotiations but simply to respond to the union's demands is a negotiator headed for defeat. On the other hand, a management negotiator who says:

a. "I will settle for no more than _____ percentage salary increase."

b. "I will not allow any decrease in the amount and quality of work performed by the workforce."

c. "I will get a good day's work for a good day's wage."

d. "I will not deprive the management team of its right to direct the workforce."

is a negotiator who likely will be successful.

15. Power is being legal

When we hear the statement: "The law is on my side," we instinctively know we have all but lost the argument. When a negotiator is able to show that the law backs a position which he has taken, he has power on his side. However, if illegality is given as the reason for rejecting a proposal, the negotiator should be certain that his position is correct; otherwise, there would be a moral obligation to accept the proposal, unless reasons other than illegality were given.

16. Power is being moral

Citizens generally recognize fair play and when they see a city council or school board trying to stop an irresponsible act of the union, the support (that is, power) of the citizens is shifted to the governing body, because that is where the morality is. When either party takes an immoral stand, that party erodes its own power and strengthens the power of the other. When policemen "speed up" traffic ticket writing, and when school teachers deprive children of their education by illegal job actions, the power balance shifts to the employer. Therefore, negotiators should always try to occupy a moral position, or at least be perceived in such a position.

In conclusion, have you assessed your power as a negotiator? You probably have more power than you realize. Have you assessed the power of your opponent? Is your assessment accurate? If in doubt, overestimate!

XIX. HOW TO HANDLE FISHBOWL BARGAINING

Beginning in 1974 with the Texas Firefighters Bargaining Law,[1] several states (e.g., Minnesota, Florida, Kansas, and Tennessee) adopted laws requiring "sunshine" bargaining, that is, bargaining in the public. Several other states also enacted milder forms of "fishbowl" bargaining (e.g., California, Wisconsin, Iowa, and Maine) which requires that initial bargaining proposals be submitted at a public meeting. The continued trend for "law in the sunshine" continues to put pressure on legislatures to require that bargaining take place in the view of the public.

Based upon the author's own experience, research, and observation, there appear to be few advantages to bargaining in the public, and many disadvantages. Some of the advantages are:

1. The presence of the public at bargaining sessions can, in some instances, cause the union to be more reasonable in its demands, unless the audience is stacked with other public employees.
2. The presence of the public at bargaining sessions might create understanding of the agency's problems and hence strengthen public support. On the other hand, however, the public might be offended by what it sees and hears at public bargaining sessions, thus undermining public support.

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[1] Texas Statutes, 35, Article 5154c-1, Title 83, Sec. 7(E).

3. Under the economic conditions of the 1980s, the public seems less supportive of unions than was the case in the previous decade. Therefore, the unions may have a public relations problem at public bargaining sessions.

Among the disadvantages of fishbowl bargaining are:

1. Members of the governing body cannot confer in private in order to set bargaining guidelines and limits, thus revealing important information to the opposition. This can be overcome, however, in several ways:
    a. Members from the governing body can be polled individually on an informal and private basis. In this way only the negotiator is privy to all views of the governing body.
    b. The governing body can give broad general guidelines to the negotiator, and trust that a proper job will be done.

    As stated at the outset, the sunshine laws vary from state to state, so one must be careful of drawing too many generalities about bargaining in the sunshine. For example, in Florida original instructions from the governing body may be given in private.
2. The union will play to the public. This constant performing to an audience detracts from productive bargaining in several ways:
    a. Special public interest groups are brought into bargaining.
    b. The proper importance of items is unbalanced.
    c. The parties are forced to concentrate on "good press," rather than good negotiations.

3. Public bargaining requires more time than private bargaining, thus increasing the likelihood that tensions will escalate.
4. Bargaining in the public arena inevitably gets amateurs into the act, who simply complicate the process and help no one.
5. Usually those members of the public who do attend and try to get involved in bargaining do not maintain their interest, but go on to other hobbies and avocations after they tire of their fling with collective bargaining.
6. Only special interest groups come forward at bargaining sessions. After all, there is no one "public." There are only individual citizens and groups of citizens which share one common interest. These individuals and individual groups do not represent the public. They represent only their own interests and views.
7. Those citizens who attend bargaining sessions are not accountable to the public. Their involvement carries with it no burden for actions taken. Those who are unaccountable for actions taken can afford the luxury of irresponsibility.
8. With an audience present there are witnesses to all that is said, making changes in positions difficult. As a result, public bargaining has a tendency to chill real bargaining and harm sincere explorations for solutions to problems.
9. Playing to an audience has a tendency to polarize the parties and highlight the adversary nature. Each party has a tendency to try to make itself an angel by making the other appear to be a devil.

10. Usually union members outnumber the citizens at public bargaining meetings, thus creating a hostile atmosphere for negotiations.
11. Collective bargaining does not show the best size of either government services or union operations. Therefore, fishbowl bargaining can create a public relations problem for both parties.
12. The "public" that attends bargaining sessions does not view either the union or the employer as responsible representatives of the "public," thus undermining the official representatives of the public. This raises two very interesting questions:
    a. Just who is the "public"? and
    b. Just what is best for the "public"?
13. Open bargaining forces the legitimate negotiating parties to engage in subterfuge in order to get their job done. In other words, the sunshine bargaining law can be a mockery, in that the public thinks that it is viewing the entire process of negotiations, when in fact the real negotiations may be taking place through other channels.

For obvious and understandable reasons, public school districts, particularly those in Florida, have had the most experience with fishbowl bargaining. At this point in time, despite many years of experience, reports from that state are somewhat mixed. Irrespective of others' experiences, however, and for the many reasons discussed in this section, the author is of the opinion that private bargaining is preferable to fishbowl bargaining.

XX. HOW TO COPE WITH STRIKES

War is a form of negotiations, but negotiations is not necessarily warfare. Labor negotiations need not involve inflicting pain and discomfort, or the threat thereof; but, unfortunately, such conditions are sometimes present in labor relations. Under ideal circumstances, collective bargaining is a process of exchanging proposals and counterproposals in order to arrive at mutually productive solutions on salaries, benefits, and working conditions. Collective bargaining in the public sector should not be a process whereby one party inflicts inconvenience on the other in order to obtain something. For example, drawbridge operators of New York City once left drawbridges open in order to bring about a concession from the city at the bargaining table. This irresponsible act not only used force to exact money from the city, but caused inconvenience and damage to the innocent citizens.

Collective bargaining in the private sector, as practiced today, was devised politically as a means by which employees could band together under the protection of law to engage in collective power activities to obtain benefits which might otherwise not be made available to them. Although this approach to providing for worker welfare is of questionable value in the private sector, it is even more questionable in the public sector. At least in the private sector, management has a number of options to defend itself against the power of a union backed by federal law. But in the public sector, management is less able to respond effectively to the organized strength of public employees.

The major flaw in public sector bargaining today is that it is modeled after the industrial model of the private sector. The public and private sectors are significantly different with regard to labor-management relations. These differences are discussed in detail in the book, Bargaining Tactics. As a consequence of these differences, the same collective bargaining model should not be used in both sectors.

One unfortunate characteristic of public sector collective bargaining, as transferred from the private sector, is the use of confrontation tactics. Such tactics are designed to use fear as a means of inducing management to make concessions--which it would not otherwise make. The use of threats, and acts of hostilities, forces government agencies to take actions which likely are not in the best interests of the public which the government agency serves.

The purpose of hostile acts is to cause the employer or its agents to make concessions on union demands at the bargaining table--which the employer would likely not make if not faced with such hostile acts. This is important to remember, because if concessions are made under such conditions, then the union is taught that such tactics do deliver benefits. Keep in mind, however, that some hostile acts on the part of the union may be justified. In such cases, the employer may find itself under considerable pressure to capitulate to union demands. However, if the employer has taken a reasonable and fair position, there should be no capitulation to violence or the threat of violence.

Another important point to remember about pressure tactics is this: The threat of adverse action is often more effective than the adverse action itself. In W. H. Hutt's book, The Strike-Threat System (New Rochelle, N.Y.: Arlington House, 1973, p. vii), the author states: "One of this book's conclusions is that fear of strikes inflicts far greater damage on the economic system than actual strikes." And in the conclusion of his book (p. 282), he states:

> The broad conclusion of the analysis presented above is self-evident and hardly needs reiteration. The strike-threat system is an intolerable abuse of economic freedom. The strike is a type of warfare under which privileged groups can gain at the expense of the unprivileged. The system provides no acceptable shield against monopolistic exploitation. In a year in which it has become an accepted institution, wage rates imposed through it cannot transfer income from investors in general to workers in general; nor can it redistribute income from the rich in general to the poor in general. On the other hand, it can and has greatly reduced the community's aggregate income wherever it has been tolerated. Hence, because it has failed to raise labor's proportion, it must have materially reduced the absolute aggregate wages flow. Moreover, it has rendered the distribution of the wages flow more unequal--a regressive consequence which is aggravated because labor costs enhanced through duress exploit all the people in their consumer capacity and harm the poor differentially.

Of all the hostile acts which a union can take, the labor strike is viewed by the union and management as the most extreme. A labor strike in the public sector is particularly damaging because of the monopolistic nature of governmental services. In the competitive private sector monopolies are not permitted. No one company has exclusive control over a market. If the National Bakery Company employees go on strike and the company is unable to produce for its customers, the General Baking Company will easily take care of customers who normally buy from National. However, when the teachers strike and the schools are forced to close, there is no place else for the children to go because there is no other public education company in town.

Strikes do occur in government service. Although prior to 1965 such events were almost unheard of, the number of public employee strikes steadily increased from that year until the total number of strikes fifteen years later reached about 600. And the strikes were not restricted to only one geographic area. They were distributed throughout the United States. Since strikes do take place in the public sector, any public agency dealing with a union should consider the possibility that a strike could occur and prepare accordingly. In other words, any government agency engaged in collective bargaining with an employee union should have a strike plan.

The advantages of a strike plan are several:

1. A strike plan provides a strategy to weather a strike; therefore, the use of fear of a strike by the union is substantially reduced and management can act with more confidence at the bargaining table.
2. A strike plan provides a strategy to keep the government agency operating and providing needed services to the public--which has a right to expect such services.
3. The presence of a strike plan is a clear signal to the union that the agency will not be intimidated by a strike or the threat of a strike.

A. Many Strikes Unnecessary

The author has made a study of public employee strikes for many years and has concluded that the majority of these strikes could have been avoided had management been more enlightened in its total labor relations program, as well as more skillful at the bargaining table.

True, there have been some strikes which would likely have occurred despite reasonable concessions and good faith bargaining by management, but such strikes have been in the minority. In the opinion of the author, then, most strikes could have been avoided had the employer and its negotiating team been more expert in their labor relations roles.

Strikes are seldom caused by one factor. Usually there is a combination of reasons for public employees resorting to a concerted withdrawal of their services. Following is an exhaustive list of the causes of strikes in government services. By knowing in advance what are the major causes of strikes, the employer should be able to take steps in many instances to avoid such strikes.

1. Failure of the governing body to offer a salary acceptable to the union

One of the most common issues present during a strike is a dispute over wages. Although there is a point, below which a union will not accept a salary offer, most unions will accept less than they planned on if management has bargained in good faith and explained its case well.

2. The appropriating body fails to fund a negotiated agreement

There have been a number of strikes precipitated by failure of the appropriating body for the agency to appropriate funds sufficient to fund the salary agreed to at the bargaining table. To avoid this unfortunate situation, this rule should be adhered to: Don't promise what you can't deliver, and deliver what you promise. Where the union negotiates with a governing body that is also the appropriating (tax levying) authority, there is seldom any excuse for the violation of this rule. Even when the union is negotiating with a fiscally dependent body (e.g., a school board), while there may be some excuse in failing to obtain sufficient money to fund the agreement, in most cases through careful coordination with the appropriating body there should be adequate funds available.

3. Reprisals by management

In a few instances management has attempted to retaliate against the union for actions taken by the union which the employer found disagreeable. When such retaliations are detected by the union they can become a rallying cry for the union and its members. Certainly, retaliations have no place in sound labor relations.

4. Incorrect and inflammatory information distributed to employees by the union

Occasionally, in its zeal to rally the employees, the union may overstate its case against the employer and so radicalize the union members that a strike becomes unavoidable. Although there is no guaranteed solution to such tactics, direct communications from management to the employees is necessary in this type of situation. In such cases, only face to face communications between employees and the employer will dispell any misinformation.

5. Management takes adverse action against the union leaders

In a number of strikes it appears that management sought out one or more union leaders in order to frighten the union or to set an example for other employees. Such actions are highly offensive to the union members and should be avoided at all costs.

6. Reduction in force in a manner unacceptable to the union

The dismissal of employees due to a reduction in force (RIF) is a very serious matter to those dismissed and a real threat to those who remain. So much so that such RIFs carried out in an arbitrary manner have been the cause of strikes. To minimize the likelihood of a strike due to RIF, the employer should negotiate a mutually agreeable RIF provision, or in the absence of a collective bargaining relationship, adopt a fair RIF policy after soliciting suggestions from employees and their representatives.

7. Bargaining in bad faith

Good faith bargaining generally entails the willingness of both parties to meet at mutually agreeable times and places in order to exchange proposals and counterproposals in a sincere effort to reach a written agreement on specified issues; normally wages, benefits, and working conditions. Although good faith strongly implies that concessions are necessary--in fact, there is no law which requires that either party make a concession. Any act which deviates from the definition of good faith bargaining is likely to be bad faith bargaining and may be considered an unfair labor practice by the union. For more on this subject see the section pertaining to unfair labor practices.

Unions universally regard the right to engage in collective bargaining as their number one priority. Any effort by management to undermine this precious right by engaging in bad faith bargaining will inevitably incur the wrath of the union. In a number of public strike situations the manner in which the employer approached the negotiations process was the real issue; not wages, or benefits, or working conditions.

In light of the experiences in the private sector during the first decade of bargaining under federal law, the attitude of public unions today toward bad faith bargaining is not surprising. During the early years of collective bargaining in the private sector, most of the strikes were over organizational issues and procedural matters--often involving allegations by the unions that employers were not engaging in proper bargaining procedures.

8. Employer is given incorrect reports on the status of negotiations

Just as the union will sometimes incorrectly inform its membership of the status of negotiations, so will the management team sometimes misguide the governing body as to that status. In most instances such misguidance takes the form of exaggerating the implications of the union's demands and failing to reassure the governing body that an agreement can eventually be reached by good faith bargaining on both sides. Given such a prejudicial report, a governing body can be easily led to overreacting to the union and into taking such a tough reactionary position that reasonable compromises cannot be made to the union. And, without any movement from management, the union may be forced to take drastic actions away from the bargaining table.

9. Ad hominem conflicts between the negotiators for both sides

There have been a few instances where the relationship between the two chief spokesmen was so acrimonious that productive negotiations became impossible. The author has known of a few cases where the negotiator for management was so inept and obnoxious, that the union had a ready-made excuse to take any action necessary in order to circumvent management's negotiator. Naturally, unions, too, sometimes produce an obstreperous spokesperson.

When it is certain that the source of the problem is the chief negotiator, the person should be removed, but in a manner so as not to undermine the concept of exclusive spokesperson. That means that there must be some unrelated reason for changing spokespersons.

10. Intransigence on the part of either party

If negotiations are to lead to an agreement, there must be concessions made by both parties. Unfortunately, occasions do arise when one or both parties refuse to make reasonable concessions, resulting in a breaking off of negotiations. Such breaking off of negotiations can be one of the first signals of an impending strike, and the employer of the negotiator should be alert to any unreasonable "stonewalling" on the part of its negotiator. When there is a stalemate in negotiations, each party should look first at its own behavior in an attempt to determine if any actions can be taken to reopen the flow of agreements.

For more on how to break a temporary impasse, see the section on how to break temporary deadlocks.

11. Too many demands to be dealt with reasonably

Some state and national public employee unions have "master contracts" which are used to assist local unions in their efforts to start bargaining for the first time. This master contract is a comprehensive labor contract which the parent union considers to be ideal, and is usually quite long, containing several hundred individual issues. One can well imagine the problem at the initial opening of negotiations on a first contract of being faced with the presentation of several hundred demands. And this is exactly what has happened in hundreds of governmental jurisdictions throughout the nation, and continues to happen today as school districts and municipalities enter into labor negotiations for the first time.

In some situations the presentation of several hundred demands has simply overwhelmed both parties, making an agreement almost impossible. When faced with the impossibility of an agreement, the likelihood of a strike is increased significantly. When confronted with a master contract, both negotiators must use their utmost skill to rid the table of padding and to focus attention on the important issues. How to do this is the subject of this book, as well as Bargaining Tactics.

12. Failure to give proper recognition to the union

As explained earlier, most of the strikes in the early days of collective bargaining in the private sector were caused by the failure of employers to give proper recognition to unions. To this day, one of the most offensive acts which an employer can take is refusal to recognize a union, particularly if it has won a representation election. But, even though representation strikes are the most common result of failure to recognize a union, some strikes have occurred even after the union has been recognized by the employer. The most frequent cause of such strikes being the failure of the employer to work with the union as the exclusive representative of the workforce; in other words, bypassing the union and dealing directly with employees on negotiable matters.

13. Negotiations in public

As discussed elsewhere in this book, a number of states have some form of "sunshine" bargaining. Although there are no final and definitive conclusions at this time as to the overall impact of "fishbowl" bargaining on the operation of government, the author is of the opinion that bargaining in the public is not in the best interests of either the union or the government agency. Reasons for this opinion are explained in the section on bargaining in the public.

Simply stated, bargaining in the public can make compromise for either party more difficult than if they were bargaining in private. Furthermore, the parties are tempted to play to an audience, or the press, and make statements which may be difficult to retract because of the presence of so many witnesses. Whereas in private bargaining sessions, positions can be easily retreated from. Also, public bargaining sessions can create strong antagonisms between the parties due to embarrassment in front of an audience. Under the worst conditions, the parties can work themselves into a relationship so hostile that negotiations break down, thus laying the groundwork for a strike.

14. Insufficient time for negotiations

Under normal conditions, negotiations on an entire contract should allow sufficient time for negotiations, sufficient time to resolve an impasse if an agreement is not reached, and sufficient time to ratify the agreement--all before the agency budget is adopted. Should insufficient time be allowed for the full process of negotiations, and should the employer take unilateral action on matters under negotiations, the possibility of a strike is increased. Therefore, every effort should be made to allow an appropriate length of time to permit negotiations to succeed.

15. Lack of binding arbitration of grievances

During the early stages of collective bargaining in the private sector, many labor contracts did not contain a provision for resolving disputes over the application and interpretation of the labor contract. Consequently, a number of strikes in those days occurred during the life of the labor contract over an allegation that management was not implementing the labor contract properly. The number of strikes in the public sector over the absence of binding arbitration of grievances has not been nearly as great as that in the private sector. However, there have been some public employee strikes due to the absence of binding arbitration of grievances and allegations of the union that management was not implementing the labor contract correctly.

The fact that some strikes have been caused by the absence of binding arbitration of grievances is not to suggest necessarily that all labor contracts in the public sector contain such a provision. Whether or not arbitration is contained in a labor contract is a matter of law and negotiations between the parties.

16. Backing either side into a corner

The purpose of labor negotiations is to reach an agreement between labor and management; therefore, any act which interferes with that objective should be avoided. When the opponent is placed in a position where there is no escape, problems can arise for both parties.

By way of a simple example, let us suppose that management gives an ultimatum to the union that negotiations sessions will take place only in the office of the chief executive. Aside from the fact that such an ultimatum is an unfair labor practice in most instances, the union, given such an ultimatum, has been backed into a corner. Management, too, has put itself in an untenable position by making such an ill-advised demand. As a result, both parties could find themselves at loggerheads. Should such a deadlock persist, sooner or later the union will turn to other means to open negotiations.

In this hypothetical case, both parties have an unnecessary problem caused by an incompetent negotiator. An experienced negotiator must always couch his proposals and responses in a manner which allows some escape for the opponent. In the hypothetical case cited, the management negotiator should have made a proposal to meet in the chief executive's office and then proceeded to negotiate an agreement on that issue. Naturally, the management negotiator should include in his negotiations plan the possibility of paying a price for a demand which is basically distasteful to the union.

17. Dispute over the scope of negotiations

There is probably no issue in public sector bargaining (particularly among public school teachers) which causes more deadlocks than differences over what is negotiable. Since the topic of the scope of negotiations has been discussed thoroughly elsewhere in this book, no further comment need be made here, except to reiterate that management must be prepared to defend its position if it refuses to bargain on a given issue.

18. Excessive generosity in the first agreement

In hundreds of cases where public agencies negotiated for the first time, very comprehensive and generous contracts were granted. There were many reasons for such erroneous actions--inexperience, fear, poor advice, etc. But whatever the reason, such agreements left little room for future concessions by management. Furthermore, by granting over-generous contracts, unions were given the impression that similar concessions would be the norm of the future. As a consequence, in successive negotiations unions often had high expectations to receive, while management had low expectations to give. Such a drastic incongruency in expectations can create so many unresolved disputes that a strike becomes the only acceptable way to resolve the impasse.

The message here is don't give away anymore than is reasonably necessary to reach an agreement and to achieve acceptable relations with the union and the employees.

19. Removal of benefits won through bargaining

As a general rule, once a benefit appears in the labor contract, it is there permanently and any attempt to remove it unilaterally or through negotiations will be met with understandably stiff resistance from the union. Unions view the removal of hard-won benefits as a dare to strike--a dare they are likely to accept.

If the removal of benefits is necessary, however, the best way to proceed is to follow the process of "retrieval bargaining," a difficult procedure of removing through negotiations that which was earned through negotiations. For more information on how to carry out retrieval bargaining, refer to "Retrieval Bargaining" by the author.

20. Incarceration of union officials

In numerous illegal public employee strikes a strike has been exacerbated or prolonged by the imprisonment of union leaders. Invariably the result of such punitive action is that the union leaders become martyrs. This statement, however, does not mean that union leaders should never be placed in jail for leading an illegal strike. The action to be taken in the event of an illegal strike is determined by the circumstances surrounding the strike. In some cases, imprisonment of the strike leaders is a proper response. In other cases, such a response would be unwise.

21. Injunctions against union actions

In many cases where a union is on the verge of taking illegal strike actions, the employer will seek and obtain an injunction requiring that the union cease and desist. In some cases, the union views such action as a challenge to the union's power and responds with a withdrawal of services or an escalation in other militant actions. There is no one answer as to whether or not an injunction should be sought in all cases of threatened strikes or actual strikes, since each case is different and requires special handling.

In most cases, however, where an injunction could be used, it does not resolve the underlying problem. The underlying problem usually is best resolved through negotiation. Furthermore, in the view of the author, many situations requiring an injunction are the result of a poor overall labor relations program.

22. Incompetent negotiators

If there is any one major cause of strikes, it is incompetent negotiators. Most strikes in the public sector have taken place where there was an inexperienced negotiator involved. Frankly, if both management and the union have competent and professional spokespersons, there seldom is any excuse for a strike. Therefore, both parties should give the highest priority to the selection of a skilled negotiator.

23. Failure to ratify the contract

One of the worst experiences that a negotiator can have is for his employer to reject a proposed contract tentatively agreed to at the bargaining table. Such a rejection is viewed by the union as a supreme act of bad faith and grounds to take strong aggressive actions. If both management and the union have taken reasonable positions, and if both parties are represented by competent negotiators, the ratification of tentative agreements should be routine. However, not all negotiations are conducted in a reasonable manner and proposed contracts are sometimes rejected. Unless management is willing to compromise its position and make an alternative offer acceptable to the union, conditions for a possible strike can be created. Therefore, both parties should work out their internal relationships to assure that a proposed contract is ratified.

23. Union busting tactics by management

Some employers do not want to deal with an employee union regardless of any collective bargaining law and will take extreme actions to neutralize the union. Such tactics include:

a. intimidating union leaders
b. discrimination against union members
c. bypassing the union
d. contracting out
e. other similar actions

In cases where collective bargaining is protected by law, such anti-union tactics can mean warfare. Not only does management run the risk of various unfair labor practices by following such strategies, but management invites the union to organize a strike in order to achieve what it views as legitimate recognition.

Employers should be allowed to exercise their legal rights in their efforts to remain union free. But whether such efforts are legal or illegal, a union dedicated to its cause will likely fight back with counter-tactics in its efforts to win recognition. Before undertaking any serious anti-union strategies, an employer should seek the advice of an expert labor relations consultant.

24. Management underestimates the union's power

One certain invitation to confrontation is for one party to misjudge the power and will of the other. One function of an expert negotiator is to determine the power of the adversary and the will of the adversary to exercise its power. In a wide range of public sector strikes, a major reason for the strike was management's underestimation of the union's power and its willingness to use that power. In strikes caused by this type of misjudgment, the employer is usually forced to make compromises during the strike which should have been made prior to the strike--compromises which likely would have avoided a strike. Elsewhere in this book, considerable attention is given to the nature of power in labor negotiations. By becoming familiar with the concepts presented there, the reader should be able to better anticipate the power of the opponent and the willingness of the opponent to use its power.

25. The union miscalculates the will of the employees or the power of the employer

A union can precipitate a strike by its failure to faithfully represent its members and its misjudgment of the employees will to strike for what they want. A union can also precipitate a strike by its failure to calculate accurately the will of the employer to resist union demands.

A perceptive union representative should know exactly what the union membership is able and willing to do in the name of collective bargaining. Similarly, an experienced union negotiator should make it his business to know how much pressure from the union will be tolerated by management. Failure of either party to adequately assess the strength of the other can be an open invitation to take actions which create such hostile relations that a strike becomes inevitable.

26. Rivalry between two unions competing for the same membership

In many municipalities, school districts, and other government agencies, there is more than one union seeking exclusive recognition for the same group of employees. Often the competition between these unions to gain majority support escalates into very aggressive campaigns. The major issue in these representative efforts is usually which union is the toughest; or, which union is most capable of delivering more benefits and better working conditions at the bargaining table. In such a competition the employer can get caught in the crossfire between the warring unions.

In their efforts to win members, the employer is often described by the unions as an enemy of the employees. This misguidance is an attempt to win the loyalty of the employees away from the employer or the opposing union. In their exuberance to win support, the unions can so radicalize the employees that demonstrations of their strength and unity become imperative. Once such demonstrations are started they can easily expand into a full-fledged strike.

When caught in a situation where two strong unions are vying for the same membership, the best general strategy for management is to maintain a firm but fair position at the bargaining table. Any attempt to favor one union over the other, or any attempt to engage in union busting, surely will meet with failure.

27. Taking public positions before bargaining begins

Sometimes inexperienced union leadership will publicly announce its negotiations demands to the media before negotiations actually begin. The purpose of this approach is to gain publicity for the union and thereby raise its profile and enhance its image among the workers. However, a more common result of such an ill-advised tactic is that the expectations of the union members are raised beyond what the union can deliver. As a consequence, the union may recommend to its members a proposed agreement substantially less than what was expected, resulting in a vote of contract rejection. When a contract is rejected which has been presented by the union, one more strike ingredient has been added.

B. Strikes Usually Signaled

Very few strikes come as a surprise, unless management is blind. As stated previously, strikes are usually the last step in a series of steps in the escalation of negotiating pressure. Normally, a strike is not resorted to until lesser threats have exacted their concessions. Therefore, under the normal sequence of events, there are a number of indicators that a strike is possible. These signals should not be ignored. They are often signs that something is wrong with negotiations. By recognizing the signs of a possible strike, management can take any appropriate corrective measures. Following are the most certain telltale signs of a strike:

1. Picketing

Picketing is the patrolling by union members of the entrance to an establishment--in order to persuade other workers to stop work, to discourage customers from patronizing the establishment, to publicize the existence of a dispute, or to prevent by force or persuasion the delivery of goods and services to or from the establishment. When a large number of union members assemble at the work site to discourage other workers from entering the work site, this is referred to as mass picketing. Neither picketing nor mass picketing are necessarily synonymous with striking. Picketing can be used to bring pressure to settle grievances, to stop alleged unfair labor practices, and to get the attention of the public focused on a union complaint. In all cases, however, a picket line or mass picketing should be viewed as a possible indicator of a strike.

2. Stonewalling

Another sign of a possible labor strike is a persistent refusal of the union to make further concessions at the bargaining table. When either party takes a firm and final position on the labor contract (or major portions of it), such a tactic is often referred to as "stonewalling." Stonewalling is a sign that if management is not willing to concede to the union's position, then the union is ready to go on to methods other than table bargaining to achieve its demands. Unless stonewalling is a willful act of bad faith, it can usually be overcome by techniques to break temporary deadlocks. These techniques are discussed in the chapter entitled "How to Break Temporary Deadlocks."

3. History of strike in labor relations

Just as strikes are regular in some private industries (e.g., coal mining), so do some public agencies face strikes rather regularly. The author is familiar with one public school district where two equally powerful teacher unions exist. For many years strikes have occurred on a regular basis. Chances are that this process will continue, since past relations and experiences influence future relationships. Therefore, if labor strife has been a part of a government agency's background, this can be a sign of a possible strike. Although every effort should be made by both the union and management to break the self-destructive cycle referred to here, unfortunately, there are communities where strikes are a necessary part of reaching an agreement.

4. Disappearance of essential items

One of the most effective deterrents to a strike if the understanding on both sides of the bargaining table that if a strike should occur, the agency will continue to operate. Recognizing that the continued operation of the government agency undermines the effectiveness of a strike, unions have engaged in various tactics to force the agency to shut down. One such tactic involves the removal by union members of items essential to the operation of the agency. For example, in a number of strikes by sanitation workers the keys to the sanitation trucks as well as vital engine parts were removed. Prior to a number of strikes by public school teachers, lesson plan books were removed from the classroom. Such tactics are designed to preclude nonstrikers from performing the functions of the agency.

One of the key requirements of a thorough strike plan is a provision to safeguard all keys, tools, documents, and equipment necessary to keep the agency operating. The disappearance of such items is a clear indication that a strike is imminent and appropriate corrective steps should be taken immediately.

5. Selective concerted actions

A well-planned strategy in the exercise of union power involves the use of a series of hostile tactics, each one more threatening than the previous one. Such tactics are as numerous as the imagination of the union, and include such actions as concerted use of sick leave, slow-down, work-to-the-rule, excessive use of the grievance machinery, harrassing telephone calls to management officials, and other similar actions. When many such tactics are combined into a coordinated campaign of harrassment, the impact can be effective. Most members of governing bodies of cities, counties, and school districts are politically sensitive or are part-time volunteers; therefore, they can often be rather easily worn down and intimidated.

The best guard against such acts is a thorough strike plan which takes into account the fact that such prestrike tactics are a part of a strategy orchestrated by the union to exact concessions from the governing body which otherwise would not be granted.

6. Propaganda campaigns

A strike by public employees is often a struggle between the union and the governing body of the public agency as to which shall gain the majority support of the public. In order to win public support, a campaign must be initiated before the strike begins.

Basically, such a propaganda campaign is directed toward one objective--to convince the public that the governing body is the "bad guy," and that the employees are being so purposefully exploited and abused that a strike is inevitable. When the strike actually occurs, hopefully a majority of the public will side with the union and blame the governing body for the strike, and for the resultant inconveniences that must be endured by the public.

One very effective technique employed by some unions is to convince the public that the real reason for the strike is to force the governing body to take certain actions which are in the best interest of the public. For example, teachers have been known to claim that the real reason for their strike was to protect children from overcrowded classes. Of course, the fact that teachers will always want fewer children in class no matter how small the classes is not mentioned.

Another example can be found in the air controllers who are employed by the federal government to control air traffic around large urban airports. On several occasions, as the controllers' union threatened to strike, it would appear by the various press releases from the union that the main reason for the strike was to force the Federal Aviation Agency to purchase better computers to make the skies safer for passengers. Curiously, however, in all public employee strikes that invoke the public good as the purpose of their strike, there is always present in the list of unresolved issues the matter of employee salaries. Is there any doubt in such cases what the real issue is?

7. Boycott of selected activities

Since an all-out illegal strike contains considerable risk for the public employees, tactics of less severity are preferable. For example, a selective withdrawal of services is not only a real inconvenience and threat to the public agency, but there is only limited risk to the employees for engaging in such activities. For example, the refusal of teachers to attend faculty meetings and their refusal to accept "extra-curricular" duties, is not usually a serious enough breach of their duties to warrant any serious discipline. However, the actions referred to can be quite destructive in the school. Given much of this treatment by the organized teachers and the school board begins to understand that the teachers are serious and that they have the unity and power to take more serious action. Once the school board understands this, the union has succeeded in weakening the resistance of the board.

The author has made a careful study of what constitutes a strike by public employees under the many applicable state and federal laws (and accompanying regulations) and has concluded that a strike exists when the following three elements are present:

a. The action is concerted.
b. The action is a bargaining tactic.
c. The action interferes with the normal and legitimate functions of the agency.

When employees boycott certain activities of the public employer and selectively reduce their service, this definition should be kept in mind. However, before any legal action is taken to counter the union's activities, legal counsel should be sought.

8. Inflammatory press releases

Under most negotiations procedures press releases are made during negotiations only by the mutual agreement of the parties. However, the phrase "during negotiations" can be interpreted in two ways. "During negotiations" could mean the period of time from the presentation of proposals until an impasse is reached; or, the phrase could be interpreted to cover the period of time from the presentation of proposals until all efforts to reach an agreement, including an impasse procedure, have been exhausted and negotiations are "permanently" broken off. Under the first definition there is more opportunity for unilateral press releases than under the second definition. In either case, however, and especially if there is no agreement on press releases, the union will use the press whenever the union decides that the advantages outweigh the disadvantages.

As stated earlier, it is important to the union that the public view management as being at fault and the local press is a natural tool to use. Most newspapers, particularly small local papers (as are most newspapers), do not have the staff, the time, the funds, or the expertise to prepare a worthy news story. Most reporters want instant and prepared news and a union is an excellent source since it always has an axe to grind.

The author has been the subject of several hundred news articles in newspapers from all parts of the nation. Most of these news articles have been inaccurate and biased in favor of the union. In support of this opinion, the author edited a comprehensive national labor relations newsletter for eleven years, during which time he reviewed some 30,000 news articles about labor relations in the public sector. A repeated analysis of random samplings of these articles revealed a severe bias in favor of the unions. A vast majority of the news coverage was about union complaints and union allegations against management. Given the normal proclivity of citizens to be suspicious of government, and the proclivity of many citizen-workers to be anti-management, the author has concluded that, although a vast majority of newspaper articles are inflammatory and inaccurate, they remain, nevertheless, more favorable to unions than to management.

Not all inflammatory news releases are certain signs of an impending strike. Many such articles are simply one more step in the escalation of tension, but when such news releases do appear (sometimes in the form of paid advertisements) they can be a signal, particularly when coupled with other strike indicators, that a strike is near.

9. Employees enroll in crisis training

Over the years, the author has collected many union-produced documents regarding the training of state, regional, and local union representatives. Based upon these documents, it appears that the unions generally do an excellent job of training their people. Not surprisingly, there appears to be some correlation between those who attend such training sessions and those districts which experience strikes. Although a public agency cannot always know why employees have taken approved leave, many strikes in the public sector have been preceded by local union leaders attending some type of state or national crisis training. Therefore, when the public employer becomes aware that its union leaders are attending such a training program, the employer should assume that a possible confrontation is possible and take appropriate steps.

10. New faces in the community or at the work sites

Most large national and state unions have paid staff workers who are available to assist local unions in their collective bargaining activities. Normally, these consultants are spread so thin that they do not have time to work regularly with all locals. Therefore, when such persons appear on the scene during a period of growing negotiations tensions, their presence should be interpreted as a sign that some concerted action by the union is likely.

11. Threats

Like most good management negotiators, a union negotiator has learned not to make an ultimatum unless prepared to back it up. Therefore, threats by the union that a strike is being considered should not be taken lightly. Although a threat is designed to head off taking the action threatened, if management does not change its position after being threatened, the union may have no choice but to carry out its threat. For a more complete discussion of how to cope with threats, refer to the section on union tactics.

12. Walkouts on negotiations

Many union negotiators are trained to use many intimidating tactics to encourage the employer to make concessions desired by the union. These tactics are discussed elsewhere in this book. However, one tactic should be given special note here--that is, the tactic whereby the union team abruptly walks out in the midst of negotiations, usually at the point where management refuses to compromise on a issue important to the union. Most "walkouts" are planned and are merely one step in the escalation of tensions. In most instances, walkouts can be handled by patience and an offer to reopen discussion. However, in conjunction with other prestrike activities, a walkout can be a clear indication that a strike is being seriously considered.

13. Telephone campaigns

When it comes to collective bargaining, well-organized public employees can be the epitome of a single-purpose, special-interest group. After all, the salaries and benefits of public employees are fundamental to all other needs and wishes. When a union can capture the full loyalty of all public employees of a county, a city, a school district, or a state or federal agency, the union has achieved a real power status. With such power, the union can muster a large workforce to carry out the various tactics necessary to force the employer to make sought-after concessions.

One effective technique, where large numbers of workers are needed, is the telephone campaign where large numbers of persons need to be contacted, sometimes on a repeated basis. The author has experienced such telephone campaigns on several occasions and found them to be quite effective, at least in the short run. In such a campaign, members of the governing body, we well as key members of the management team, are contacted repeatedly by a large number of employees. These numerous telephone calls not only give the listener a skewed picture of the controversy, but, after continued exposure to such harrassment, one's resolve begins to weaken.

Not only are telephone calls made to management officials, but large numbers of calls are made to community leaders and members of the general public. The purpose of contacting these people is the hope that they, in turn, will also call management officials.

Even when telephone campaigns as described here create counter efforts by opposing forces, the union usually still gains simply by creating attention and confusion. In such an atmosphere, the union has more chance of winning than losing. Don't forget, collective bargaining is largely a process of management bargaining while the union collects. The worst that can happen as a union embarks on its telephone campaign is that it will fail to gain something which it has never had!

14. Hotlines

In a comprehensive telephone campaign, unions will often set up special "hotlines." These are special telephone numbers, broadly advertised and manned from morning to night, where anyone may call in to state views regarding the controversy between the governing body and its employees. Usually, the opening of such hotlines is widely covered in the press (remember, the press wants easy news) and the union again receives more free publicity.

Among his many experiences with hotlines, the author remembers one particularly good example which took place in a large school district. In that school district, elementary school children were released one afternoon per week to allow elementary teachers to have duty-free "planning time." The superintendent had concluded that such a provision was very expensive educationally and tried to remove the time. He could not have picked a better issue to rally the teachers. Several hotlines were hooked up, thousands of telephone calls were made. The union kept logs of parent views as they called in and as they were contacted. As the reader might guess, the teachers still have their one afternoon off per week!

15. Work-to-the-rule

In most work situations there is a wide margin between the amount of work that employees actually perform and the least amount of work they could perform without being disciplined. In other words, most employees are very conscientious and perform better than is absolutely necessary to keep their job. It is that work done beyond the minimal acceptable level that makes any agency, private or public, succeed in its mission.

When the union is successful in convincing all employees to work at the minimum required level, the employees are "working-to-the-rule." Depending on the situation, the tactic is more often than not reasonably effective. However, as one chief executive of 15,000 employees once inquired when faced with work-to-the-rule, "Does this mean we will now get some work done?" The tactic sometimes has little impact. Unless the tactic actually results in some noticeable inconvenience to management or the public, the tactic will likely be useless.

Successful or not, however, a work-to-the-rule action which involves a sizeable majority of the employees is a sign that the union holds sway over the employees and may be capable of causing the employees to undertake more drastic measures.

16. Mass meetings

Any time that a large number of employees gathers to express their concern over progress in negotiations, management should be concerned. Whether the employees mass at a picket line or at the local firehouse, a union cannot get a majority of the employees to turn out after work hours unless there is an issue of importance to the employees. Therefore, such mass meetings, when coincidental with other militant conduct, should be viewed as one step closer to a strike.

17. Proliferation of rumors

Much of negotiations strategy is based upon confidentiality, especially when a strike is being planned. Although the union likes to occasionally infer that it has the power to stroke, the actual strike itself should come by surprise to gain maximum effectiveness. Therefore, as stated at the outset of this section, management must learn to read the indicators of a strike, since the union will not normally give advance notice.

Usually, when a strike is being considered seriously, there will be some break in the confidentiality on the union side. Gradually, rumors will begin to circulate. When such rumors come to the attention of management they should be investigated within legal procedures. To the extent possible, management should know far in advance the date that the union will pull the workers off the job. A strike which catches management completely by surprise is likely to paralize the agency; at least until some semblance of service can be restored.

18. Posters and brochures

The author remembers once in a midwestern community that the first indicator he observed indicating a strike was the appearance on his car windshield of a flyer (circulated by the local public employee union) warning that negotiations were proceeding badly. I took the flyer to the negotiations session that night and asked the union spokesman what it meant. For the first time he informed me of the several concerns that he had. Fortunately, though, in that situation, we were able to resolve our differences with reasonable compromise on both sides. Had the flyer not been paid attention to, however, I am convinced that a strike would have occurred.

19. Crisis centers

In a few cases where strikes have occurred, or nearly occurred, in the public sector, "crisis centers" have been established. Usually, these centers are set up on a temporary basis in a "store front" building, usually in view of large number of passers-by. The crisis center is always opened with as much publicity as possible. By renting private space, the union is free to conduct its affairs without any interference from management. Sometimes the crisis center contains several hotlines, along with information for picketers available on the sidewalk. The crisis center becomes the central headquarters for the union, where it holds special meetings and offers regular press releases. A crisis center is almost always a sure sign that a strike has become a very serious option for the union.

C. Conclusion

Although strikes by public employees are not always the most potent weapon they have, strikes are always the last resort in the union's arsenal of weapons. Strikes should be avoided by both parties, since they seldom solve any problem--but they should not be avoided at any cost. There have been instances when, in the view of the author, no reasonable action by management could have headed off a strike. In such cases, the only advice to management is "batten down the hatches," hire as many strike breakers as needed, and outmaneuver the union.

As stated at the outset of this section, no competent union is going to signal its strategy to the opponent in advance. Therefore, the union can be expected to threaten to strike (remember, the threat is more effective than the actual act) but not to announce it when the decision is made to go on strike. Therefore, management must be perceptive from the beginning of negotiations and carefully log and analyze each strike indicator as it appears. By identifying each strike indicator, and analyzing its cause, management has taken the most important precaution in avoiding a strike.

D. The Strike Plan

Although the subject of what to do in the event of a strike has been covered in another book by the author, and will be expanded in a future book, a few suggestions should be made here.

1. No public employer should enter into collective bargaining with an employee organization without a strike plan

The governing bodies of all public agencies have a legal and moral obligation to make every reasonable effort to assure that the government service which has been entrusted to their care is carried out without interruption. Most government services are monopolistic and the persons served by the agency have no other source of that service.

A comprehensive strike plan has a dual advantage in that it will both discourage the union from striking, and, should the union strike anyway, the agency will be prepared to operate at least at the emergency level.

2. The strike plan should be based on a commitment to keep the agency operating during a strike

Although in the early days of collective bargaining in the public sector there was a tendency to throw in the towel during a strike, there has been a gradual acceptance of the advice of the author to take whatever action is necessary to keep the agency operating at the maximum level possible. Although there is still not universal acceptance of this advice, it remains the most appropriate response to a strike.

Keeping the agency operating, even at a minimal level during the strike, has three advantages:

a. The citizens continue to be served.

b. The union's primary strike leverage is greatly reduced, if not destroyed.

c. The union will be less likely to strike in the future.

Exactly what to do to assure that the agency continues to operate during a strike will be examined in a book to be released later by the author.

3. Identify and analyze the telltale signs of a strike

Strikes are seldom announced in advance, and surprise strikes can be a serious disadvantage to the employer. Therefore, management should not ignore any of the strike indicators discussed earlier in this section.

4. Control the negotiations progress on critical issues

Although there have been a few strikes caused by issues not under negotiations, most strikes concern issues under consideration at the bargaining table. In any union list of proposals there are both critical and strike issues; that is, some issues are important, but the union will not strike over them. A competent management negotiator knows what the strike issues are and finds some way to diffuse them. The job of a management negotiator is to find acceptable ways to avoid strikes rather than be a part of the problem that causes the strike.

5. When a strike is imminent, the employer's last position at the bargaining table should be one that does not offend the public's sensibilities

As discussed previously, a strike is a struggle between the governing body of the agency and the agency union to determine which party shall be supported by the public. When a strike is imminent, negotiations have broken down, and disputes are being aired in the public arena, management should be certain that its position on all remaining issues is reasonable. Otherwise, the public may blame the employer for the strike and exert pressure to settle on union terms. However, the reader is reminded of the caveat offered earlier. Save a little something as a face-saving device to bring the employees back to work.

6. Be prepared to endure an indefinite strike

To date, every public sector strike in America has eventually come to an end. Although a minority of strikes have lasted for more than a month, the vast majority of strikes last a few days. Despite this fact, however, the wise employer prepares a strike plan which prepares the agency to hold out forever!

XXI. THE FUTURE FOR PUBLIC SECTOR LABOR RELATIONS

By predicting the future, one can deal better with the present. Although no one can predict with certainty what the future holds for public sector collective bargaining, certain trends were discussed in the opening of this book. These trends indicate certain possible developments in the future.

The future of labor relations in the public sector will be influenced greatly by what happens politically and economically with the nation during the last fifteen years of this century. Certainly, the economic crunch of the late 1970s had serious impact on labor relations in the public sector.

Assuming no catastrophic changes in the socioeconomic character of the nation, and barring an international military conflagration, there are certain predictions which might be made for the future of labor relations in the public sector.

One overriding development in the future of labor relations in the public sector will be a tendency for government service, wherever it contains collective bargaining with its employees, to perpetuate the status quo. The presence of a strong union and of a comprehensive labor contract work together to inhibit change. Not only do the employees resist change out of fear of the unknown, but the labor contract itself is often written in such a manner that change is impossible without changes in the labor contract. Therefore, the most significant impact of collective bargaining in the public sector has been to perpetuate the status quo. It is likely that the future will similarly provide the same outcome from collective bargaining.

To be more practical, however, here are some predictions for the future of labor relations in the public sector:

1. There will be no federal law to govern labor relations at the local and state levels

During the 1960s and 1970s, there was considerable support for a national collective bargaining law similar to that in the private sector. However, with the conservative shift in the political character of the nation, and the general disinfatuation with unions generally in the private sector, the move to obtain a national bargaining law for all public employees lost its steam. The issue will, therefore, be given a low priority by the U.S. Congress for years to come.

2. Strikes by public employees will continue

There will be no drastic increase or decrease in public sector strikes in the short run. Prior to 1965, strikes by public employees were almost unheard of. By the end of 1979, however, the total number of public sector strikes had reached almost 600. Considering the fact that only about 15,000 governmental agencies were engaged in collective bargaining in that same year, this figure of 600 strikes is significant. Of course, there is no record of how many strikes were threatened and how many concessions were made due to these threats.

3. The "management team" concept will grow

The management team concept will grow in the public sector to become more like that in the private sector, as far as labor relations is concerned. When collective bargaining was introduced into the public sector, as far as labor relations is concerned. When collective bargaining was introduced into the public sector during the mid-1960s, there was considerable confusion over the proper role of supervisors and administrators. However, by 1980, this issue had cleared up considerably. Granted, in 1980, some managerial personnel were unionized, but nevertheless, there had developed a general acceptance of the management team concept. Therefore, the distinction between managers and rank-and-file employees will continue to sharpen in the future.

4. There will be resistance to expanded benefits for public employees

Given the serious nature of the American economy in the 1980s, public employees can expect to gain little at the bargaining table in the near future. Their main hope will be to hold on to the benefits they have won in the past.

5. Labor contracts will increasingly become multi-year

Whereas unions demanded and obtained one-year contracts in the early days of collective bargaining, this is no longer the case today. Nor will it be the case in the future. Faced with the prospect that bargaining will become a two-way process, where both parties give, unions will want to keep long contracts (except for salaries and compensable benefits) in order to protect what they now have.

6. Merit plans will continue to weaken

Prior to collective bargaining in government service, government agencies governed their employees through extensive civil service merit plans. However, gradually the labor contract has tended to replace or modify these personnel regulations, and this process will continue as long as collective bargaining is practiced.

7. Collective bargaining in the public sector will continue to become more uniform

When bargaining came to the public service there was considerable confusion and variations in the process from state to state. For the most part, both the unions and the employers were inexperienced, especially the latter. However, with the passage of time and the growth of experience, the process has gradually taken on a degree of uniformity, regardless of the state. This process will continue.

8. Binding arbitration of grievances will increase

When collective bargaining was practiced in the 1930s in private industry, grievance arbitration was not common. Today, however, 95 percent of all private industry contracts contain a provision for arbitration of grievances. The same history is emerging in the public sector. As the bargaining process matures, and as the various state laws become more comprehensive, the use of grievance arbitration will expand.

9. There will be no significant change in interest arbitration

Interest arbitration of negotiations impasses has been experimented with considerably in the public sector during the 1970s. The conclusions from these experiences are mixed and it is unlikely that anything new will develop regarding interest arbitration in the foreseeable future.

10. There will be greater union coordination of bargaining nationally and regionally

Based upon practices developed in Michigan and the efforts of the National Education Association, there will be continued efforts to develop consortium bargaining.

11. The right-to-work movement will continue to succeed

Although many agency shops do exist now, and there will be additional ones in the future, public employees will generally remain free to join, support--not join or not support unions.

12. The scope of bargaining will continue to expand

After half a century of collective bargaining in private industry, almost any topic is negotiable. Even though an unlimited scope of negotiations is unlikely at any time in the future of public sector bargaining, there is no doubt that the list of negotiable topics will expand.

Part of the reason for this expansion in the scope of negotiations will be the fact that public employers will grant concessions on non-monetary union proposals in order to obtain settlements on financial matters. In other words, since employers will be unable to give their employees the salaries requested (in order to keep up with inflation), there will be a temptation to mollify the union with nonfinancial benefits.

13. There will be no drastic or rapid change in the number of public employees covered by labor contracts

While most public school teachers are covered by labor contracts, most other public employees are not. It is doubtful that there will be any significant change in this balance for some time

14. There will be no significant change in collective bargaining at the public four-year college level

Collective bargaining in higher education leveled off in the mid-1970s, and there appears to be no indication of future change. Naturally, the resolution of the Yeshiva controversy could create an unpredictable situation.

Conclusion

Irrespective of what public employees and their unions do in the future, and almost irrespective of changes in public sector bargaining laws, public employees cannot reasonably expect to have prosperous times for many years. Government can prosper only when the private sector prospers, and the outlook for a prosperous private sector for the near future is not bright.

It took over fifty years of government intervention in the American free system to put it in its present shape. The nation was a world leader in all major industrial endeavors in the 1960s and led the world in standard of living. A scant twenty years later the nation is losing competition for international markets (and even some domestic markets), and the standard of living has slipped below that of some other nations.

What took a half century to destroy will take many years to recreate.

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